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**T**HE *Practical Register*: Or, a General Abridgment of the Law, as it is now practised in the several Courts of *Chancery, King's Bench Common Pleas and Exchequer*, digested by Way of Common Place, under Alphabetical Heads; with great Variety of Cases extracted from the Reports; together with *all the Rules of the said Courts*, brought down to the Year 1719. collected by the Author, *John Lilly, Gent.* In Two Volumes, the *Second Edition*, in which are comprised the Rules of the respective Courts, brought down to this present Year 1735. And likewise (under their several Heads) all the Cases reported since the Publication of the former Edition. To which are added Two Tables; one of the several Acts of Parliament mention'd and explain'd throughout this whole Work, the other of the Names of the several Heads contain'd in each Volume.

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T H E  
**Practical Justice**  
O F  
**P E A C E :**  
O R,

A TREATISE shewing the *present*  
POWER and AUTHORITY of that OFFICER,  
in all its Branches.

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From the **Common** and **Statute Law**, and  
other *Authentick* Books written upon that Subject;  
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TICAL METHOD.

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Great Variety of *Correct* Forms of the most  
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Together with

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which relate to the TITLES contained in this WORK,  
and of the TITLES themselves.

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roners, Sheriffs, Clerks of Assize, and of the Peace, Commission-  
ers of Sewers, Overseers of the Poor, Surveyors of the High-  
ways, Ministers, Church-wardens, Constables, and all Others who  
*have any Concern* in COUNTY or PARISH Business.

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lished*; and a Continuation of all the Statutes to the End of  
the last Session of Parliament.

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By **JOSEPH SHAW**, of the *Middle Temple*, Esq;  
**In Two Volumes.**

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V O L. I.

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In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns of  
E. Sayer, Esq;) for Messieurs **Ward** and **Wicksteed**, in the  
*Inner Temple Lane*. M DCC XXXVI.

# Practical Arithmetic

## PART I

A TREATISE ON THE ART OF  
COUNTING IN NUMBERS  
FROM THE COMMON AND EASY TO THE  
OTHER AND MORE DIFFICULT  
AND COMPLEX



By JOHN W. LEECH, Esq.  
Author of "The Art of Counting in Numbers"  
(LONDON: J. JOHNSON, 17, ST. PATRICK'S SQUARE, 1854.)

THE PRINCIPLES OF ARITHMETIC  
AND THE ART OF COUNTING  
IN NUMBERS, FROM THE COMMON  
AND EASY TO THE OTHER AND  
MORE DIFFICULT AND COMPLEX

THE FIRST PART, CONTAINING  
THE ART OF COUNTING IN  
NUMBERS, FROM THE COMMON  
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Printed by H. and N. PIERCE, and R. GOSWELL, 17, ST. PATRICK'S SQUARE,  
E. 1854. (For the Author's Use and Circulation.)  
Last Year's Year: MDCCCLIV

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TO the RIGHT HONOURABLE  
**PETER** Lord **KING**,  
Baron of OCKHAM,  
Lord High Chancellor  
of *Great Britain*.

My LORD,  
**T**HIS Treatise concerning the Office  
of his Majesty's Justices  
of the Peace, is by Your  
Lordship's *especial Ap-  
probation*, most humbly  
dedicated to You, by

Your LORDSHIP'S  
*Most Devoted, and  
Dutiful Servant,*

**JOSEPH SHAW.**



To the Right Honourable

PETER Lord KING

Baron of COKHAM

Lord High Chancellor

of Great Britain

M. 10. 10. 10.

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# THE PREFACE.

**T**HE Duty and Office of a Justice of Peace have been so much enlarged of late Years, by the Authority of the Legislature, that it has been found very necessary to add one more to the Number of Books already written on this Subject; and we hope the present Undertaking will meet with a candid Reception from the Publick, since it has been the principal Design of the Author to keep clear of the Errors and Defects of the other Performances of this Kind.

Some of which, it must be acknowledged, have been very Voluminous, and many Things inserted which have been foreign to the Purpose; others too Concise, and by that Means obscure; many of them very Erroneous, whereby several Justices have frequently been drawn into great Mistakes, and most of them Defective in the Business created by the later Statutes, and that more especially as to the Practical Part.

To remedy these Inconveniences, the Author has taken the utmost Care to render this Work as useful as possible, by throwing the Whole into a strict Alphabetical Order; and thereby placing before the Reader, at one View, the Substance of whatever has been written upon each Subject, both in the Common and Statute Law; and at the same Time supplying him with a Collection of the newest Precedents of every Kind, which he will find regularly inserted under their proper Heads.

## The P R E F A C E.

*This Method, the Author is satisfied, will be of singular Use to those Justices of the Peace and others, who have but little Leisure or Opportunity to search the many Volumes of Reports and Statutes, from which the following Treatise has been collected; and he hopes it may not be altogether useless to the Gentlemen at the Bar, if consulted only as an Abridgment of this Kind of Learning contained in the larger Books; the Perusal whereof is so necessary to their Profession.*

*And since all the Acts of Parliament, which have any Relation to the Office of a Justice of the Peace, are carefully continued and brought down to the End of the last Session of Parliament; it is hoped this Treatise will appear, both for Matter and Method, the compleatest upon the Subject; and that it will prove as Beneficial to the Publick as it was at first designed.*

J. S.

 *The Author thought it needless to repeat the Directions of the Warrants throughout the Book, and therefore the Reader is desired to take Notice, that where-ever he meets with any Warrant not directed to the proper Officer who is to execute it, that all such Warrants are to be directed to The Constable or Constables, High Constable, Surveyor of the Highways, Church-wardens, Overseers of the Poor, &c. as the Nature of the Warrant shall require.*



# THE PRACTICAL Justice of Peace, &c.

## Of Conservators of the Peace at Com- mon Law.

**T**HE King or Sovereign of this Realm is the principal Conservator of the Peace thereof, from whom the Administration of Justice, and the Jurisdiction of all Causes are originally derived.

The King:  
Dalton 1.

The Lord Chancellor or Keeper, Lord High Steward, Lord Marshal and High Constable and Lord Treasurer of Great Britain, and every Justice of the King's Bench, and Master of the Rolls, (a) are Conservators of the Peace throughout this Realm, and may award Precepts, and take Recognizances for the Peace by Virtue of their Places, and, upon not finding Sureties for the same, may commit to Prison.

The great Of-  
ficers of the  
Realm.  
Dalton 1.

(a) And yet  
for the Master  
of the Rolls it  
is held, that he  
maketh Pro-  
cess, and ta-

keeth Recognizance, not as incident to his Office (as all the others may,) but by Prescription.

The Justices of the Court of Common Pleas, Barons Judges within of the Exchequer, and Justices of Assize, *Nisi prius*, *Oyer* and *Terminer*, and General Gaol-Delivery, in their respective Courts, and the Chamberlain of Chester, (b) in that County Palatine, are Conservators of the Peace; and if the Court of Exchequer there, which hath the Jurisdiction of a Court of Chancery, and is by Virtue of his Office a Conservator of the Peace there, as was certified by Sir James Dyer and the Justices of the Court of C. B. 19

their View.  
Dalt. 2.

(b) The Cham-  
berlain of Che-  
ster is Judge of

## The Power of

the Offenders be within their View, may send their Officers to bring them before them, and for want of Sureties may commit them, but not grant Warrants for the Peace; but these Conservators now a-days have Commissions by which they act.

Courts of Record. Dalt. 3.

The Stewards of the Sheriffs Turn, of a Leet, of a Court of Piepowder, and all other such Courts of Record, are Conservators of the Peace within their several Courts, and may commit for an Affray done in their several Courts while they are executing their Offices, and may also impose a Fine for Contempt, but not grant Warrants for the Peace.

Sheriff, Coroners. Dalt. 3.

The Sheriff is a Conservator of the Peace in his County, and may take Sureties for the Peace *ex officio*; and so also are the Coroners.

High Constables. Dalt. 3.

High Constables are Conservators of the Peace, and at their Petty Sessions may commit for an Affray.

Petty Constables and Tithingmen are Conservators. Dalt. 4.

Petty Constables are Conservators of the Peace *ex officio*; so Borsholders, Thirdboroughs, Tithingmen, and Headboroughs have the like Authority, at least in their Absence; for otherwise they are but Assistants to them in the Parish at large, *viz.* such Parishes as have Constables, for otherwise they differ but in Name: All these may make Deputies, because but in ministerial Offices. *Mich. 13 Jac. B. R. Philips and Winscom's Case.*

May command the Assistance of others. Dalt. 5.

All Conservators of the Peace may command the Assistance of others to arrest all such who in their Presence shall break the Peace; and for their Neglect herein may be punished by Indictment. *3 Inst. fol. 158.*

Constable negligent or refusing may be fined. Dalt. 5.

And if a Constable, being called or required to see the Peace kept, refuseth, or shall be negligent therein, he may be indicted and fined for the same.

### Of the Original, Power, Authority, &c. of Justices of Peace at this Day in General.

Original of Justices of Peace. 1 Ed. 3. c. 16.

**T**HERE are several Opinions concerning the Original of Justices of Peace: *Polydore Virgil* tells us they began under *William the Conqueror*. My Lord Coke says, That in *Easter Term 6 Ed. 1. Prima fuit Institutio Justiciariorum pro pace conservanda*. Mr. Pryn in his Animadversions upon him says, That *Hen. 3.* after the Agreement made between him and the Barons, did constitute Guardians *ad pacem conservandam*: But the learned

Anti-

## Justices of Peace, &c.

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Antiquary Sir Henry Spelman says, That they were made by Edward 3. 1327. in the Beginning of his Reign, on Purpose to suppress Commotions which might happen in dethroning Edward 2. For there were extraordinary Conservators of the Peace appointed in Times of imminent Danger, either from Rebels or foreign Invaders, to take Care of and defend particular Districts committed to their Charge, and to preserve the Peace within their Limits; and these had Power to command the Sheriff with his whole *Posse* to aid and assist them. *Lamb. lib. 1. c. 3.* And being appointed by the King's Commission in every County to keep the Peace, they were therefore called *Custodes & Guardiani pacis*. But by another Statute 36 Edw. 3. c. 12. they were called Justices of Peace, which Name continues to this Day; and since *Custodes Pacis* and Justices of Peace have been adjudged to be the same. *P. 10 Jac. 1. B. R. Rex versus Little.* And by the Statute 2 Hen. 5. c. 1. Stat. 2. Justices of the Peace shall be made of the most sufficient Persons dwelling in the same County, by the Advice of the Chancellor and King's Council.

The Number of these Magistrates at first was uncertain as at this Day; but 12 Ric. 2. cap. 10. a Law was made, That there should be no more than six in each County, with the Justices of Assize; and this Number by a Statute made 14 Ric. 2. c. 11. was increased to eight. *Dalt. p. 9.* This Law is not abrogated at this Day, though the Number of Justices is greatly increased in every County, and is now uncertain at the King's Pleasure: It is true, in *Wales* there were but eight in a County, by a Clause in the Stat. 34 & 35 Hen. 8. but by the 5th of *William and Mary*, that Clause is repealed.

The Power of constituting Justices of Peace is now only in the King, which formerly in Part was delegated to others, but is since reassumed by the Statute of 27 Hen. 8. cap. 14. and this is usually done by the Advice and Nomination of the Lord Chancellor or Lord Keeper.

Number of them by 12 R. 2. cap 10. was reduced to six, and increased to eight in a County. Number now uncertain.

By whom Justices of the Peace are constituted. *Dalton 10.*

There are three Sorts of Justices of Peace.

1. Such as have been antiently created by Act of Parliament; as the Bishops of *Ely* and their Temporal Stewards are Justices of Peace within the Isle of *Ely*; and so the Archbishops of *York*, and the Bishops of *Durham*, and their Temporal Chancellors, by Statute 27 H. 8.

Three Sorts of Justices of Peace. 1. By Act of Parliament. *Dalt. 10.*

B 2

2. Such



## The Power of

1. By Charter.  
Dalt. 10.

2. Such as have been created by the King's Letters Patent under the Great Seal (and by his Bill assigned) as Mayors, and the chief Officers of divers Corporate Towns, who are Justices of Peace within their Limits by their Charters; and such the King cannot discharge again at his Pleasure; but they shall continue and enjoy their Jurisdiction according as their Charters enable them. And therefore if the King do make out a Commission of the Peace to others in the same Place, yet the Authority and Jurisdiction of the Mayor, &c. remaineth good, for that it was granted to them and their Successors, and is not revokable at the King's Pleasure, as the Commission of the Peace is; but for Cause the Liberties may be seized, and likewise a concurrent Jurisdiction may be granted to others in the same Place.

See Stat. 18 E.  
3. cap. 2. and  
13 Rich. 2.  
cap. 7. and 17  
Rich. 2. c. 10.

If the Justices by Letters Patent have any Commission *ad Audiendum & Terminandum*, this Grant (as it seems) is void, unless some one Person learned in the Law be joined with them. These particular Sorts of Justices may execute all the Power given by Statutes to any Justice of Peace, but have not as large Authority as is usually given by the Commissions.

Dalt. 10.

3. By Commission under the Great Seal.  
Dalt. 11.

3. Such Justices of Peace as are created by the King's Commission; These are made of Course by Commission under the Great Seal of *Great Britain*, and nominated and appointed by the Discretion of the Lord Chancellor or Lord Keeper. In *Lancashire*, they are under the Seal of the *Dutchy*, by Stat. 27 Hen. 8. cap. 24. In other Counties the Form of the Commission is as follows:

## The Commission of the Peace.

Commission of  
Peace for any  
County in  
England, Scotland or Wales.

**G**EORGE the Second by the Grace of GOD, &c. to A. B. C. &c. greeting: Know ye that we have assigned you, and each of you jointly and severally, our Justices to keep our Peace in our County of D. and to keep and cause to be kept all Ordinances and Statutes made for the Good of our Peace, and for the Preservation of the same, and for the quiet Rule and Government of our People, in all and singular the Articles thereof in our said County (as well within the Liberties as without) according to the Force, Form and Effect of the same, and to chastise and punish all Persons offending against the Form of those Ordinances or Statutes, or any of them, in the County aforesaid, as according to the Form of those Ordinances and Statutes ought to be done, and to cause all those who shall threaten any of

## Justices of Peace, &c.

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our People touching their Persons, or the Firing of their Houses, to come before you, or any one of you, to find sufficient Security for the Peace or their Good Behaviour towards us and our People; and if they shall refuse to find such Security, then to cause them to be safely kept in our Prisons, until they shall find such Security. We have also assigned you, and every two or more of you, of whom any of you the aforesaid A. B. we will shall be one of our Justices to inquire, (a) by the Oath of good and lawful Men of the County aforesaid, by whom the Truth of the Matter may be better known, of all and all Manner of Felonies, Witchcrafts, Inchantments, Sorceries, Art Magick, Trespases, Forestallings, Regratings, Ingrossings and Extortions whatsoever, and of all and singular other Crimes and Offences, of which Justices of our Peace may or ought lawfully to inquire, by whomsoever and howsoever in the said County done or perpetrated, or which shall hereafter happen to be there done or attempted; and also of all those who in the County aforesaid have either gone or rode, or hereafter shall presume to go or ride in Companies with armed Force against our Peace, to the Disturbance of our People; and also of all those who have lain in wait, or hereafter shall presume to lie in wait there, to maim or kill our People; and also of Innholders, and of all and singular other Persons who have offended or attempted, or hereafter shall presume to offend or attempt in the Abuse of Weights or Measures, or in the Sale of Victuals, in the said County, against the Form of the Ordinances and Statutes, or any of them in that Behalf made for the common (b) Benefit of England, and our People thereof; and also of all Sheriffs, Bailiffs, Stewards, Constables, Gaolers, and other Officers, who have behaved themselves unduly, or hereafter shall presume to behave themselves unduly, or have been, or shall happen hereafter to be careless, remiss or negligent in the Execution of their Offices, touching the Premises, or any of them, in our County aforesaid. And of all and singular Articles and Circumstances, and all other Things whatsoever, that in any wise howsoever more fully concern the Truth of the Premises, or any of them, by whomsoever and howsoever in our said County done or perpetrated, or which hereafter shall there happen to be done or attempted; and to inspect all Indictments (c) whatsoever, so before you, or any of you taken, or to be taken, or before others, late our Justices of the Peace, in the County aforesaid made or taken, and not yet determined; and to make and continue Processes thereupon, against all and singular the Persons so (d) indicted, or who before you hereafter shall happen to be (e) indicted, until they be apprehended,

(a) Note; If for any County in Scotland, the Words (by Oath of, &c.) must be left out, and there inserted, [according to the Law and Custom of the Land, of all and all Manner of Felonies or capital Crimes.]

(b) If for any County in Scotland, the Words (Benefit of, &c.) must be left out, and there inserted, [Benefit of our People.]

(c) If for any County in Scotland, after the Word (whatsoever) insert (or Libels.)

(d) After the Word (indicted,) insert (or accused.)

(e) The same.

(a) After the Word (Felonies,) insert (or capital Crimes.)  
 (b) If for any County in Scotland, the Word (England) must be left out, and there inserted (the Kingdom.)  
 (c) If for any County in Scotland, the Word (England) must be left out, and there inserted (the Land.)  
 (d) If for any County in Scotland, the Words, (Our Justices of, &c.) must be left out, and there inserted (our Justices, or one of our Justices appointed to hold Courts of Circuit, in the aforesaid County.)  
 (e) If for any County in Scotland, the Word (England) must be left out, and there inserted (the Land.)  
 (f) If for any County in Scotland, the Words (Inquired of, &c.) must be left out, and there inserted, (determined. We also command the Keeper of the Rolls of our Peace in our County aforesaid to bring before you)

render themselves, or be outlawed, and to hear and determine all and singular the (a) Felonies, Witchcrafts, Inchantments, Sorceries, Arts Magick, Trespasses, Forestallings, Regratings, Ingrossings, Extortions, unlawful Assemblies, Indictments aforesaid, and all and singular other the Premises, according to the Laws and Statutes of (b) England, as in like Case hath been used, or ought to be done; and to chastise and punish the said Persons offending, and every of them for their Offences, by Fines, Ransoms, Amerciaments, Forfeitures, and other Means, as hath been used or ought to be done, according to the Laws and Customs of (c) England, or the Form of the Ordinances or Statutes aforesaid. Provided always, that if a Case of Difficulty upon the Determination of any of the Premises shall happen to arise before you, or any two or more of you, then let Judgment in no wise be given thereupon, before you or any two or more of you, unless in the Presence of one of (d) our Justices of the one or other Bench, or of one of our Justices appointed to hold the Assises in the County aforesaid; and therefore we command you, and every of you, that you diligently apply yourselves to the Keeping of the Peace, Ordinances, Statutes, and all and singular other the Premises; and that at certain Days and Places, which you or any such two or more of you, (as is aforesaid) shall for that Purpose appoint, you make Enquiries upon the Premises, and hear and determine all and singular the Premises, and perform and fulfil the same in Form aforesaid, doing therein that which to Justice appertaineth, according to the Law and Custom of (e) England, saving to us the Amerciaments and other Things to us in Respect thereof belonging, and by the Tenor of these Presents, we command our Sheriff of ———, that at certain Days and Places which you, or any such two or more of you (as aforesaid) shall make known to him (as aforesaid) he cause to come before you, or such two or more of you, as aforesaid, so many, and such good and lawful Men of his Bailiwick (as well within Liberties as without) by whom the Truth of the Matter in the Premises may be the better known and (f) inquired of. Lastly, we have assigned you the aforesaid ——— Keeper of the Rolls of our Peace, in our said County, and therefore you shall cause to be brought before yourself and your Fellows, at the Days and Places aforesaid, the Writs, Precepts, Processes and Indictments aforesaid, that they may be inspected, and by a due Course determined as aforesaid. In witness whereof we have caused these our Letters to be made Patent. Witness, &c.

Bisse and Bray.

The



## Justices of Peace, &c.

The Form of this Commission, as it now standeth, was settled by Sir Christopher Wray, Chief Justice of England, and all the Judges, Mich. 32 & 33 Eliz. Dalt. 20.

By the Conclusion of the Commission, the *Custos Rotulorum* shall have the keeping of the Records of the Sessions, and Indictments, Recognisances, &c. but not of Special Records, as of Riots, Precepts of the Peace, &c. not belonging to the General Sessions. Dalt. 19.

Two Lawyers (at least) shall be in the Commission of the Peace in every County. 18 E. 3. cap. 2. 34 E. 3. cap. 1. and 17 R. 2. cap. 10. Dalt. 2.

But notwithstanding a Justice of Peace be named in the above recited Commission; yet in Regard every Justice of Peace is taken to be within the Statute of 1 Georgii, (intituled, *An Act for the further Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales and his open and secret Abettors*) before he takes upon him to execute his Office, he must immediately after Divine Service and Sermon upon some Lord's Day within three Months after receiving his Authority, in some Parish-Church, receive the Sacrament of the Lord's Supper, according to the Usage of the Church of England, and before he take the following Oaths, shall in Court deliver a Certificate of the receiving the Sacrament under the Hands of the Minister and Church-wardens, and shall make Proof of the Truth thereof on the Oath of two credible Witnesses, at the least: And at the Time of taking the said Oaths, he shall make and subscribe this Declaration. I. A. B. do declare, That I do believe, That there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consecration thereof by any Person whatsoever; and then and there take the Oaths therein mentioned and appointed to be taken, as follows, viz. 25 C. 2. c. 2.

### The Oath of Allegiance and Supremacy.

I A. B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to his Majesty King George.

So help me God.

## The Power of

**I** A. B. do swear, That I do from my Heart abhor, detest and abjure, as impious and heretical, the damnable Doctrine and Position, that Princes excommunicate, or deprived by the Pope; or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever. And I do declare, that no foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Prebeminence or Authority, Ecclesiastical or Spiritual within this Realm.

So help me God.

## The Oath of Abjuration.

**I** A. B. do truly and sincerely acknowledge and profess, testify and declare in my Conscience before God and the World, That our Sovereign Lord King George is lawful and rightful King of this Realm, and all other his Majesty's Dominions and Countries thereunto belonging. And I do solemnly and sincerely declare, That I do believe in my Conscience, that the Person pretended to be Prince of Wales, during the Life of the late King James, and since his Decease pretending to be and taking upon himself the Stile and Title of King of England; by the Name of James the Third, or of Scotland by the Name of James the Eighth, or the Stile and Title of King of Great Britain, hath not any Right or Title whatsoever to the Crown of this Realm, or any other the Dominions thereto belonging; and I do renounce, refuse and abjure any Allegiance or Obedience to him. And I do swear, That I will bear faithful and true Allegiance to his Majesty King George, and him will defend to the utmost of my Power against all traitorous Conspiracies and Attempts whatsoever, which shall be made against his Person; Crown or Dignity. And I will do my utmost Endeavour to disclose and make known to his Majesty and his Successors, all Treasons and traitorous Conspiracies which I shall know to be against him or any of them.

And I do faithfully promise to the utmost of my Power to support, maintain and defend the Succession of the Crown against him the said James, and all other Persons whatsoever; which Succession by an Act, intituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject is and stands limited to the Princess Sophia, late Electress and Dutches Dowager of Hanover, and the Heirs of her Body, being Protestants.

## Justices of Peace, &c.

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*Protestants. And all these Things I do plainly and sincerely acknowledge and swear, according to these express Words by me spoken, and according to the plain and common Sense and Understanding of the same Words, without any Equivocation, mental Evasion, or secret Reservation whatsoever. And I do make this Recognition, Acknowledgment, Abjuration, Renunciation and Promise heartily, willingly and truly, upon the true Faith of a Christian.*

Which Oaths, if he neglect or refuse to take, he is made incapable to enjoy his Office, to sue any Action, Bill, Complaint or Information, in any Court of Law, to prosecute any Suit in Equity, to be Guardian of a Child, or to be Executor or Administrator, or to be capable of any Legacy or Deed of Gift, or to be in any Office, or vote at any Election for Members of Parliament, and shall forfeit the Sum of 500*l.* to be recovered by Action of Debt, Suit, Bill, Complaint or Information in any of the Courts at *Westminster*. Stat. 1 Geo.

He must also take the following Oath relating to his Office.

### The Oath of a Justice of Peace.

**Y**OU do swear, That in the Office of a Justice of Peace, in and for this County of O. in all and every the Articles in his Majesty's Commission enjoined and to you directed, you will do equal Right to the Poor and Rich, according to your Knowledge and the Laws and Statutes of this Realm: You shall not be of Counsel to any Person in any Quarrel depending before you: You shall hold your Sessions according to the Direction of the Statutes in that Case made: And you shall cause to be entered the Issues, Fines and Amerciaments that shall happen to be made, and all Forfeitures without Concealment or Imbezilling, and truly send and account for them to the King's Exchequer: You shall not spare any one for any Gift or other Cause, nor take any Thing for doing the Business of your Office of Justice of Peace, but the Fees and Allowances accustomed and fixed by Acts of Parliament: You shall not direct, nor cause to be directed, any Warrant by you made, to the Parties themselves, but to the Bailiffs and Constables, &c. of the said County, or other the King's Officers, or indifferent Persons to execute the same: And in all Things you shall well and truly do and execute the Office of a Justice of Peace.

So help you God.

A Justice



The Peace preserved three Ways.  
Dalt. 10.

The King by Commission may grant the Execution of Statutes to whom he pleases.  
Dalt. 20.

A Justice of Peace by the Word (*Assignamus*) is constituted Conservator of the Peace.

Justices may execute any Power mentioned in Statutes or their Commission.

Justices ought to be resident in their Counties. Dalt. 9.  
Single Justice can only admonish, where no Power given to single Justice by Statutes. Dalt. 20.

Justices can't hold Pleas on Penal Statutes, without express Power given to them by the said Statutes.

4 Edw. 3. c. 2.  
18 Edw. 3. c. 2.  
34 Edw. 3. c. 1.  
12 R. 2. c. 10.

A Justice thus sworn may enter upon his Office. And the Peace is to be preserved by these Justices of Peace three Ways. 1. Preventive by taking Surety for the keeping of it, or Good Behaviour. 2. Pacifying such as are actually breaking it. 3. Punishing those who have broke it.

The King by his Commission may grant the Execution of one or more Statutes to whom he pleases, though the Statute give not such Power; nay, of such Statutes as were made before Justices of Peace were constituted, as the old Statutes of *Winchester*, and many more.

A Justice of Peace, by Virtue of the Word *Assignamus* in the Commission, is constituted Conservator of the Peace, and hath thereby a separate Power, and may do all Acts apart by himself for the Preservation of the Peace, and may send his Warrant for the Party, and may take sufficient Sureties of him by Recognisance, for keeping the Peace, or for the Good Behaviour, as the Case shall require; and may send the Party to Gaol for not finding such Sureties. *Vide Cro. Eliz.* 154.

Where Statutes give Power to Justices of Peace, it may be executed by them, though not mentioned in their Commission; (or if mentioned there) though not in the Statutes.

When a Statute gives a Penalty to be recovered before Justices of Peace, and prescribes no Method for it, it ought to be by Bill. *Mich. 2 Ann. B. R. Salk.* 606.

All Justices of Peace ought to be resident and dwelling within their Counties (except Lords and Judges, &c.) 2 *Hen. 5. cap. 4.* and 2 *Hen. 5. Stat. 2. cap. 1.*

Where Statutes are made for the Peace, and no Power therein given to a single Justice, he only can admonish; and if not obeyed, prefer it to the Sessions, where, by a Presentment upon the Statute, the Party must be prosecuted.

Justices of Peace cannot hold Cognisance of Pleas upon Penal Statutes, without an express Power given to them by those Acts; and without such Authority, the Indictment, if taken, will be void. 1 *Mod. Rep.* 379. *Rex versus Briggs, Term. Hill. 6 W. 3. B. R.*

Nor do I find that they had any judicial Authority at first; but afterwards they were enabled by particular Statutes to hear and determine Felonies and Trespasses; and therefore had Power to inquire of Murder, because it is Felony. *Dyer* 69. And therefore Justices of Peace are to meddle only with such Matters beside their Commission,

## Justices of Peace, &c.

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Justices of Peace have all their Power by Statutes.

They are now Judges of Record, and have a larger Power than the Conservators had; because they could not send Warrants to bring Delinquents before them to be examined, which the Justices can now do, and may also commit where they see Cause.

Have a larger Power than the Conservators had.

By the Statute of 18 *Ed.* 3. *cap.* 2. a Justice of Peace hath Power to hear and determine Felonies and Trespases, and to inflict Punishments. He hath the like Power by 43 *Ed.* 3. *cap.* 1. and likewise by 12 *R.* 2. *cap.* 19. he hath Power to proceed to the Deliverance of Thieves and Felons.

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But though the abovesaid Statutes do enlarge their Power, yet by a subsequent Law, *viz.* 1 & 2 *Ph.* & *M.* *cap.* 13. they are to certify the Examinations in Homicide and Felony to the Justices of Gaol-Delivery; therefore the Sessions do not proceed to determine great Felonies; but for Petty Larceny and other small Felonies they usually try Offenders, or they may proceed in any Case where a Felony is by any Statute limited to be heard before them.

1 *Ph.* & *M.* *cap.* 13.  
Justices do not determine great Felonies.

Wheresoever a Justice of Peace hath Power by any Statute to bind over a Man, or to cause a Man to do any Thing, (if such a Person being in his Presence shall refuse to be bound, or to do such a Thing) it seems such Justice may send such Person to the Gaol, there to remain until he shall perform the same.

If any refuse to be bound over, Justices may commit him.

Where some Statutes do enable Justices of Peace to hear and determine by the general Word Examination, without shewing of what Persons; it seemeth that they may examine the Parties as well as other Witnesses. *Lamb.* 535, 536.

Justices may examine the Parties themselves.

If the Justices of Peace sit by Virtue of a Commission of the Peace, and do not adjourn, the Commission is determined. *Br. New Cases* f. 11. *A.* & *B. Plowd.* 509.

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In some Cases, as in Force, Riots, Presentments of Highways, a Justice of Peace's single Testimony is of as great Authority as an Indictment upon the Oath of twelve Men, and in some other Cases of greater Force than an Indictment.

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And generally in all Cases they may take the Examinations and commit the Offenders, and bind over the Prosecutors to the Assises, where they ought to certify their Proceedings on Pain of being fined.

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tors to Assises, where they must certify their Proceedings.

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## The Power of

A Justice not Judge in his own Case, unless assaulted, or a Forcible Entry on his own Possession.

But in his own Case he is not Judge, and ought not to execute his Office, unless he is assaulted, and then he may commit the Offender: He may likewise record a Forcible Entry upon his own Possession.

When the Justice of Peace, need not set forth his Commission.

He shall not be punished for any Thing done by him in Sessions as a Judge.

When he justifieth the Fact done by him as a Justice of Peace, he need not set forth his Commission; because he is a Judge of Record, and his Commission remaineth with the *Custos Rotulorum*.

He may take a Recognizance for the Peace.

He may take a Recognizance (for the Peace, &c.) which is a Matter of Record, and which none can do but a Judge of Record.

His Warrant not to be disputed, but obey'd by the Constable.

Lamb. 67, 94.

14 Hen. 8.

Co. 10, 76.

1 Leon. 187.

1 Cro. Eliz. 130.

His Warrant, (though it be beyond his Authority) is not disputable by the Constable or other inferior Minister, but must be obeyed and executed by them, who may be indicted for not executing it; but this must be understood when the Justice of Peace hath Jurisdiction of the Cause for or concerning which he hath granted his Warrant; for otherwise the Constable or other Officer executing their Warrant is punishable, notwithstanding the Justice's Warrant.

He may send his Warrant to apprehend any accused of Felony.

Noy 107. Whinnel versus Stroud.

He may send his Warrant to apprehend any Person accused of Felony, though the Accusation be false; but not unless accused.

He may persuade an Agreement between the Parties, where the

King is to have no Fine. Nelson 390.

But he may persuade an Agreement between the Parties for small Trespasses; but not where the King is to have a Fine.

One Justice cannot commit another, but Sessions may commit him for a Breach of the Peace.

One Justice cannot commit another for a Breach of the Peace, but the Sessions may.

One Justice may hear and determine some Offences.

Justices of Peace may make a Record of a Force by them viewed, and may thereupon fine and imprison the Offenders: Yea one Justice of Peace, in some Cases, may hear and determine Offences, and punish an Offender as convict upon his own View, or upon the Confession of the Offender, or upon Examination and Proof of Witnesses.

Where

Where the Matter is to be tried by Witnesses; regularly two Witnesses are requisite: Otherwise it is where the Trial is by a Jury; for there one Witness sufficeth, and many Times no Witnesses at all are necessary.

Sometimes Witnesses are requisite, sometimes none.

A Justice of Peace cannot bind over an Offender against a Penal Law, without being first indicted.

An Infant and Feme Covert seem both of them to be bound by every Statute in which they are not excepted. *Dyer 104. Pl. 13. Co. lib. 11. fo. 61. Dr. Foster's Case: Sed quære Bro. tit. Imprif. cont'.*

Infant and Feme Covert bound by Statute, if not excepted.

Note, That Justices of Peace may enquire of such Trespasses; whereupon any Man may have an Action on the Case for Trespafs or Deceit. *Fitz. Justice f. 12. B.*

By Statute 12 R. 2. cap. 10. it was enacted, That Justices of Peace should have 4s. per Diem, and the Clerk 2s. every Day they sat in Quarter-Sessions, to be paid by the Sheriff, who was to be allowed it in passing his Accounts; and if he neglected or refused to pay, an Action of Debt would lie against him. And since the 19 Hen. 7. and 15 Eliz. c. 9. they are to have also Part of the Forfeitures upon Conviction of Offenders against those Laws: And by the Statute of Labourers, they are to have 5s. per Diem for every Day they should sit in Execution of that Act above three Days.

Justices of Peace may take 4s. and the Clerks 2s. for every Day they sit in Quarter-Sessions.

One or more Justices of Peace cannot make a Warrant upon a bare Surmise, to break any Man's House open to search for a Felon or stolen Goods. 4 Inst. 177.

No Warrant by Justices to break open a Man's House on bare Surmise of Felony. Justices must commit to the County Goal. Legat's Case.

Justices cannot imprison, but in the common County-Goal. Co. 9. Rep. 119. Lord Sanquar's Case. But by Stat. 6. G. 1. c. 19. they may commit to the House of Correction for small Offences.

Latch 16. Brownlow p. 41.

If the Warrant be to bring before him or any other Justice, it is at the Election of the Officer to which Justice he will go: Also a Warrant may be made to bring before a particular Justice. Co. 5 Rep. fo. 59. *Forster's Case.*

Officer may elect what Justice he will go before, unless a particular Warrant.

If a Justice of Peace refuses to examine a Person robb'd, on Request, an Action will lie against him on Stat. 23 Eliz. for the Justice in this Case does not act as a Judge of Record. *Leon. Rep. 323.*

If Justice refuses to examine a Person robb'd, on Request, an Action will lie.

If a Justice of Peace pursue not the Statute, there his Act is void; but if he pursue it, then neither B. R. nor Sessions of the Peace can discharge it. 2 Brownl. 41. *Legat's Case, Jenkins 174. W. Jones 170.*

If Justice pursue not Statute, his Act is void.



Justices punished  
for Misdemeanors.

To call a Justice of Peace Buffle-headed Fellow, or to say he doth not understand Law, are indictable. *Mod. Rep.* 139. *Rex versus Darby.*

And as Justices of Peace are favoured by the Law in the Execution of their Office, so they are punished for any Misdemeanors. *Sid.* 192. For a Justice of Peace may be indicted for taking Money in the Execution of his Office, or any corrupt Practices by Colour thereof. *Sav. Rep.* 134. *Agard versus Carvendish.* *Keb. Rep.* 1 Part 727. *Sir Purbeck Temple's Case.*

Authority given to Justices of the Peace must be exactly pursued, and so it ought to appear in their Orders and Determinations. *Fares.* 99. 2 *Salk.* 475.

Orders of Justices being judicial Acts are not absolutely void in themselves, but voidable, and continue Orders till avoided: Adjudg'd in case of Debt on a Bond, with Condition to perform the Order of Justices; the Defendant pretending it was a void Order, and that he was not bound to perform it. 2 *Salk.* 674.

Justices of Peace have no Jurisdiction upon the Statute of Usury: And Indictment for Forgery lies not before Justices of Peace. 2 *Salk.* 680, 406.

And it is to be observed, Justices of Peace cannot meddle with any thing but such as the Statutes impower them, for they have their whole Power by the Statutes, and no Authority by the Common Law. *Vid.* 1 *Jones* 170. 1 *Sid.* 292. *Stat.* 1. *Ed.* 3. c. 16. 4 *Ed.* 3. c. 2. 34 *Ed.* 3. c. 1. 36 *Ed.* 3. c. 12.

Besides, inferior Courts cannot take Authority by Statute, unless they are particularly named; but superior Courts shall, unless prohibited or restrained by negative Words. *Savil* 134.

Touching the general Authority of Justices of Peace, *Vid.* *Co. Lib.* 8. 127. *Lib.* 9. 118. *Lib.* 11. 65. *Lib.* 12. 32. *Cro. Car.* 112.

And see the Difference between Commissions of Oyer and Terminer, Goal-Delivery, and of the Peace. 1 *And. Rep.* 111, 112. *Noy* 174, 177.

Justices of Peace were created 1 *Ed.* 3. c. 15, *Dalt.* 6. *Lamb.* 20. but first named so by 36 *Ed.* 3. c. 12.

A Felon is brought before a Justice of Peace upon Suspicion, tho' it appear to the Justice he is not guilty, yet he may not set him at Liberty, but so as he may come to his Trial, *Lamb.* 233. *Dalt.* 382. *Cro.* 40. otherwise it will prove a voluntary Escape in the Justice, for he is not to be deliver'd by any Man's Discretion. *Quicquid Iustitarius fecerit de Recordo ignoranter & pro defectu scientie non erit pro eo punitus.* *Crom.* 121.

## Justices of Peace, &c.

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When the same Persons are Justices of Goal-Delivery and Oyer, &c. they may sit the same Day and Place, and enquire by the same Jury, but the Entry of the Records must be several as the Indictment is. *Dalt.* 168.

The *Custos Rotulorum* is ever Justice of Quorum. *Lamb.* 387. Justice may enquire of *Felo de se* (hid or cast into the Sea) where the Coroner cannot have the View. 3 *Inst.* 55.

He may take an Information out of the County against an Offender in the County. 1 *Cro.* 213. So a Recognizance to prosecute by Assent of the Parties out of the County; but cannot use coercive Power. *Ibid.*

One Justice may compel a Vintner to draw a Man Wine who demands it, and offers Payment. 24 *H.* 8. *Dalt.* 242.

Justices of Peace cannot exercise a coercive Power out of the County, nor punish Offences (without some special Statute) out of it, or in any City or Corporation in it. *Dalt.* 24. *Crom.* 8, 121. *Lamb.* 47. 1 & 2 *P. & M. c.* 18.

Justice of Peace discharged cannot certify a Record (in his Hands) without a *Certiorari*, tho' made Justice afterwards. *Crom.* 121 & 132.

Justices of Peace cannot try a Maim by Inspection (upon an Indictment) as *B. R.* may do, *Lamb.* 532. So of embezzling and razing a Record, 8 *H.* 6. *Dalt.* 386. So of Murders or Homicides committed in the King's House, or within the Verge. *Dalt.* 73. 33 *H.* 8. c. 12. So Forgery made Felony by 5 *El.* *Dalt.* 75. nor try Persons indicted of Felony before Coroners, or Justices of Gaol-Delivery, or Oyer, &c. *Dalt.* 76.

In an Action for false Imprisonment, Defendant justified, for that the Lord Mayor of London is a Justice of Peace, and that the Defendant is a Serjeant at Mace, according to the Custom of London, and that *W. R.* Lord Mayor commanded him to arrest the Plaintiff, which he did, &c. Adjudged that a Justice of Peace cannot command a Man to arrest another in his Absence, without a Warrant, and that the Serjeant at Mace is not an Officer to the Lord Mayor, as he is a Justice of the Peace, but the Constable. 1 *Brownlow* 204 *Woody's Case.*

The Defendants were indicted for not producing the Parish Books before Justices of Peace, who were appointed by the Sessions to examine and make Orders thereon, and to commit for disobeying such Orders; but

but the Indictment was quash'd, for tho' the Sessions may refer the Examination of the Fact to a certain Number of Justices, yet they cannot delegate the Power of making Orders.

Error in Judgment on Indictment for Usury found before Justices of Peace of *Middlesex*, at their Quarter-Sessions, for that by the Statute they have no Jurisdiction given them thereof, but they have for Extortion, which is a Crime at Common Law, which Usury is not, but made so by Act of Parliament, and where a Penalty is created by Act of Parliament, the Letter thereof must be strictly pursued, and Judgment was reversed thereon.

Where the Law giveth Authority to two or more Justices to act, there one alone cannot execute this Power. Co. 5. 94. *Plowd.* 393. Co. L. 181.

And yet where a Statute appointeth a Thing to be done by two Justices of Peace (or more) if the Offence be any Misdemeanor, or Matter against the Peace, there upon Complaint made (of the Offence) to any one of those Justices of Peace, it seems that one of those Justices may grant his Warrant to attach the Offender, and to bring him before the same Justice, or any other Justice, to find Sureties for his Appearance at the next General Sessions, there to make answer to such his Offence, or else he may bind the Offender to his good Behaviour, and so to appear at the next Sessions, if the said Justice shall see any just cause so to do. But one Justice alone may not hear and determine the same.

Also when Things by Statute are appropriated to one certain Justice or more, there such Justice or Justices are to pursue their Authority accordingly. For there is a general Rule put in *Stradling's Case*, in *Plowd.* 206. that when a Thing is appointed by any Statute to be done by or before one Person certain, that such Thing cannot be done by or before any other, but that it ought to be done as the Statute hath appointed, and by such express Designation of one, or Power given to one, all others are excluded.

In all Cases where the Justices of Peace have Power to hear and determine, out of their Sessions (*viz.* Upon their own View, or upon the Confession of the Offender, or upon Proof of Witnesses) if upon such Conviction the Offender is to be committed to Gaol, the Justices ought to make a Record in Writing under their Hands of all the Matter, and of the Proofs, &c. which Record notwithstanding in many Cases they may keep by them, &c.



Also if upon such Conviction the Offender is to be fined to the King, then the Justices of Peace are to estreat such Fine, and to deliver or send the Estreat into the Exchequer, whereby the Barons of the Exchequer may cause the said Fine, or Forfeiture, to be levied to the King's Use.

By many Statutes peculiar Punishments are appointed for several Offences, as Pillory, Stocks, Imprisonment, Binding to the good Behaviour, &c. But in all these Cases no room is left for the Justices Discretion, for they ought to give Judgment, and to inflict the Punishment in all the Circumstances thereof, as such Statutes do direct. For if the King cannot alter the Manner of Execution, as to direct a Person to be beheaded, who hath Judgment to be hanged, much less can an Inferior Court alter a Judgment and Sentence directed by Act of Parliament. And therefore the Course taken up in some Counties, to admit the Party indicted for Breach of Penal Laws to submit, with a Protestation of Not guilty, and therefore forbear to inflict the Penalty imposed, and so mitigate the Penalty, is an Offence for which they are punishable. For thereby, 1. The Sentence impos'd by Act of Parliament is quite altered. 2. The Mischiefs intended to be remedied go unredress'd. 3. Many Times the Poor, who are by Direction of several Acts to have the Penalty, are thereof defrauded.

Indictment was found at the Sessions of the Peace, for forging a Letter in the Name of J. S. and upon a Motion in Arrest of Judgment, the Court held, that no Indictment lay before the Justices of Peace for Forgery, but Perjury is indictable upon 5 *El.* before the Justices of Sessions. 2 *Salk.* 406. *Dom. Regina versus Yarrington, Mich. 9 Annæ B. R.*

A Man was indicted for calling a Justice of the Peace a buffle-headed Fellow; Exception was taken, that the Words were not indictable; *sed per Cur.* because it appears they were spoken of him in the Execution of his Office, the Indictment is good; and *per Chief Justice*, all Actions for slandering a Justice in his Office may be turned into Indictments. *Comberb. 46. Pasch. 3 Jac. 2. in B. R.*

*Vide* the Orders and Directions touching their Recognizances, Bailment, Commitments, &c. (as printed in *Keylinge's Reports.*)

Justices of Peace cannot by Law hold Cognizance of Pleas upon Penal Statutes, without an express Power given them by those Acts. *Mod. Rep. 379.*

## The Power of

Where a Special Authority is given to Justices out of Sessions, it ought to appear in their Orders, that that Authority was exactly pursued; and if they do not observe the Form of Proceeding directed by Statute, it is *Coram non judice*, and void. 2 *Salk.* 475.

The Court was moved for an Information against him, for a Misdemeanor in his Office; but the Court refused to grant it, the Fact with which he was charged being done above a Year: *Cur.* Should have moved it before; *quod nota.*

A Justice of Peace may take Informations any where to prove Offences in the County where committed, and he principally resides, or take a Recognisance to prosecute. *Cro. Car.* 213.

One cannot prescribe to be a Justice of Peace. *Brownl. Rep.* 206.

A Justice cannot order the Arrest of one that is out of his Presence, by a verbal Order. *Woody's Case.* 1 *Brownl.* 204.

A Justice was fined 200*l.* for giving a Challenge. *Blac.* 43; 44.

A Justice of Peace sent a Servant to the House of Correction, on Complaint of the Master, for that he was saucy, and gave his Horses too much Corn; and this being held not to be a sufficient Cause for the Justice to send the Servant thither, an Information was filed against him by Leave of the Court. *Pasf.* 1722. *The King ver. Okey.*

If a Justice of Peace bail one not bailable, or refuse to bail where bailable, he may be fined. 3 *Ed.* 1. 15. 23 *H.* 6. 10. So for neglecting to take Order about House of Correction, or for not executing the Statutes of Forcible Entry, or for imbezilling, wilfully raising an Indictment, and changing a Trespass into a Felony. So for threatening a Juryman for presenting any Thing. So for acting as a Justice of Peace before he took his Oath, or for refusing to take Surety of the Peace when tender'd. So for not executing the Statutes against Riots, or for imbezilling or raising Records.

An Information was brought against a Justice of Peace for compounding Recognisances, and not returning them to the Sessions; and for taking 20*s.* for every unlicensed Alehouse, and converting it to his own Use; he was fined 1000 Marks, and imprisoned during the King's Pleasure, was to find Sureties for his Good Behaviour for a Year, and to acknowledge his Offence at the next Assizes. *Pasch.* 16 *Car.* 2. *Siderf.* 192.

## Justices of Peace, &c.

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A Justice of Peace was punished for conspiring with another to indict a Stranger at the Sessions; otherwise for a Thing done by him as Judge. *Cro.* 122. Imprisoned for taking Bond in his own Name, and not *Domino Regi*, it concerning the King. 33 *H.* 8. *c.* 9. So for to take Surety for the Peace being tender'd. *Crom.* 3. Embezilling or rasing Records forfeits his Office, and shall be fined. Justice of Peace compelled to find Sureties for the Good Behaviour for threatning a Juror; for presenting a Matter, and not giving Security, committed. *Dalt.* 534.

By Stat. 9 *Geo.* 1. *c.* 7. it is enacted, That if a Justice for any County at large shall dwell in a City that is a County of itself, and within the County at large for which he shall be appointed a Justice, though not within the same County, he may grant Warrants, take Examinations, &c. at his own Dwelling-house (though it be out of the County where he is authorised to act as a Justice) and such Acts of the Justice and of the Peace-Officers, in Obedience to any such Warrant, shall be good in Law, though it happen to be out of his Limits: Provided that nothing in that Act shall give Justices of the County Power to hold their Quarter-Sessions in Cities that are Counties of themselves, nor Peace-Officers of the County at large to intermeddle in any Matters arising within such Cities or Towns.

Justices having causeless and contentious Suits commenced against them, shall, upon Verdict for them, have double Costs, by 7 *Jac.* 1. *c.* 5. made perpetual by 21 *Jac.* *c.* 12.

By Stat. 1 *Geo.* 2. *c.* 27. All Persons who were Justices of Peace at the late King's Demise, or have been appointed by any Commission granted by his present Majesty before the Thirteenth of *February*, 1727, and have since the Eleventh of *June*, 1727, taken the Oath of a Justice before a Person duly authorised, or shall take such Oath before the Twenty-eighth of *November*, 1728, shall be indemnified for all Acts done by them, as Justices, notwithstanding such Oath of Office was not taken within the Time, as in Strictness of Law was required.

A Justice of Peace is not qualified, unless he has 20*l.* *per Annum*, except Men of the Law; and therefore a Justice of Peace was indicted, for that he sat *contra formam Statuti* 18 *H.* 6. *cap.* 11. and the Indictment was quash'd, because it was not alledged that he had not 20*l.* *per Annum* at the Time when he sat as Justice of Peace; for if he had at that Time, then he was not punishable

Indictment against a Justice for acting, not having 20*l.* *per Annum*, quashed, &c.



## The Power of

within the Statute. *Roll. Rep. 2 Part 247. Cro. Jac. 643. Pl. 4.*

But now by a Statute made 5 *Geo. 2.* it is enacted, that from and after the Twenty-fifth Day of *March, 1733.* no Person shall be capable of being, or of acting as a Justice of the Peace, for any County in *England or Wales,* who shall not have an Estate of Freehold or Copyhold, to and for his own Use and Benefit, in Possession for Life, or for some greater Estate, either in Law or Equity; or an Estate for Years determinable upon one or more Life or Lives, or for a certain Term originally created for one and twenty Years, or more, in Lands, Tenements or Hereditaments lying in *England or Wales,* of the clear yearly Value of One hundred Pounds, over and above what will satisfy and discharge all Incumbrances that may affect the same.

No Attorney, Solicitor or Proctor in any Court whatsoever, shall, after the 25th of *March, 1733.* be capable to continue, or be a Justice of the Peace within any County of *England or Wales,* during such Time as he shall continue in the Business and Practice of an Attorney, Solicitor or Proctor.

If any Person not qualified according to this Act, shall, after the 25th of *March, 1733.* accept or take upon himself the Office of a Justice of Peace, or shall do any Act as such, the Person so offending shall, for every such Offence, forfeit and pay the Sum of One hundred Pounds; one Moiety to the King, his Heirs and Successors, the other to him or them that will sue for the same, by Action of Debt, Bill, Complaint or Information, in any of the Courts at *Westminster,* in which no Essoin, &c. shall be allow'd.

This Act shall not extend to any City or Town, being a County of itself, or to any other City, Town, Cinque Port or Liberty, having Justices of the Peace within their respective Limits and Precincts, by Charter, Commission, or otherwise.

Nor to incapacitate any Peer, or Lord of Parliament, or the eldest Son, or Heir apparent of any Peer or Lord of Parliament, or of any Person qualified to serve as Knight of a Shire, or to incapacitate or exclude the Officers of the Board of Green-Cloth from being Justices of the Peace within the Verge of his Majesty's Palaces, or to incapacitate or exclude the Commissioners and Principal Officers of the Navy, or the two under Secretaries in each of the Offices of Principal Secretary of State, from being Justices of the Peace, in and for such maritime Counties and Places where they usually have been Justices of Peace.

Nor

## Justices of Peace, &c.

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Nor shall it extend to any of the Heads of Colleges or Halls in either of the two Universities of *Oxford* and *Cambridge*, but that they may be made Justices of the Peace of and in the several Counties of *Oxford*, *Berks* and *Cambridge*, and the Cities and Towns within the same, and execute the Office thereof, as fully and freely in all Respects as heretofore they have lawfully used to execute the same, as if this Act had never been made.

In some Cases the Office of a Justice of Peace is not judicial, but only ministerial; as upon a *Supplicavit* out of Chancery or *B. R.* for taking Surety for the Peace or Good Behaviour, on a Writ on the Statute of *Northampton*, 2 *Ed.* 3. c. 3. for a Forcible Entry, and on a *Certiorari* out of the Courts of *Westminster* to certify any Recognisance, Indictments, or other Record, either taken before them, or in their Custody; in which Cases the Justices may act no otherwise than they are authorised by the several Writs, which they must likewise return into the Courts whence they issued, with their Doings thereupon.

In some Cases the Office of a Justice of Peace is not Judicial, but only Ministerial.

The Justices of Peace ought to keep their Sessions (which is a Court of Record held before two or more Justices, *Quorum unus*, &c.) not when they please, but according to Stat. 2 *Hen.* 5. c. 4. four Times in a Year, viz.

*Dalt.* 21. Justices ought to keep their Sessions four Times a Year at least.

The first Week after { *Michaelmas*,  
                                  *Epiphany*,  
                                  The Close of *Easter*,  
                                  The Translation of *Thomas a Becket* (i. e.) the Seventh of *July*.

Time of keeping it.

It seems to be the Intent and Meaning of the afore-said Statute of 2 *H.* 5. c. 4. that the Weeks, wherein the afore-said Feasts do fall, must be first ended before the Sessions can begin.

Yet by the Statute 14 *H.* 6. cap. 4. the Justices of Peace of *Middlesex* are not obliged to keep Sessions above twice in the Year; but they may do it oftner if they think fit: And Justices of the Counties Palatine of *Chester* and *Lancaster* are to keep Sessions only twice, viz. *Michaelmas* and *Easter*, 42 *Hen.* 8. cap. 43. though at what Place in the County not being ascertained by any Law, therefore it is left to the Discretion of the Justices. Only the Sessions for *Anglesey* is by 5 *Ed.* *Dyer* 135. to be kept always at *Beaumaris*; but by 1 *Geo.* the Justices of Peace may now adjourn it from Time to Time to any Part of that County, for the Ease of those who take the Oaths to the King, but to no other Purpose.

## The Power of Justices, &c.

By Stat. 1 Hen. 5. c. 4. Justices of the Peace may, if they see Cause, keep more than four Sessions yearly. *Lam.* 628.

If any Thing be done in private Sessions, it ought to be returned to the Quarter-Sessions. *Style* 360. And the Sessions is but as one Day. *Palm.* 44.

All Articles within Commission are inquirable at any special Sessions.

All the Articles within the Commission of the Peace are both inquirable and determinable at any Special Sessions of the Peace; and also all such Statutes as use the Word Sessions indifferently, without adding General or Special. *Lamb.* 535, 536. tho' a private Sessions of the Peace is not said to be held for the County. *Style* 359.

Where treble Damages are given by Act of Parliament, the Justices are not to assess the Damages, and then treble them; but the Jury ought to find the Damages, and then the Justices are to treble them. *Cro. Car. p.* 438. in *Brumsted's Case*. *Jones's Rep.* 379. *The King versus Lamfern.*

How the Justices Power is determined.

The Power and Authority of a Justice of Peace by Commission are determinable either by the Demise of the King, *Lam.* 71. *Dyer* 165. a. but this is alter'd by Stat. 1 Anne, c. 8. whereby it is enacted, That all Commissions of the Peace shall not be determined, but shall continue in Force for Six Months next ensuing the Demise of any King or Queen, unless sooner superseded by the next immediate Successor; or they are determinable at the King's Pleasure, and that signified either by a Discharge under the Great Seal, or by a *Superseas*; which last doth but suspend their Authority, and may be reviv'd by *Procedendo*: Or 2dly, By Implication, as by granting Commissions to others, leaving out the old ones, whose Power ceases either by Notice, reading the new Commission at the Assizes, or holding Session by Virtue of it; in which two last Cases, the old Justices must take Notice of the new Commission; but nothing already done by them shall be deemed void; or Process, &c. then depending, be discontinued. The Acts of the old Justices are lawful till the Sessions, when the new Commissioners are published. *Mo.* 187. Or 3dly, By Accession of another Office, as of Sheriff in the same County, during which Time it is suspended as it seems; but if made a Coroner, it is the Opinion of some that his Power is extinct. *Lamb.* 72. *Quere.*

Dalt. 11.

Dalt. 12.

But an Accession of any Honour or Dignities takes not away their Power.

Dalt. 12.  
Mayors and Constables, &c. Office not determin'd by Death of the King.

The Authority of all Officers chose by the People, by Virtue of the King's Writ, or otherwise, are not determin'd by the Demise of the King, as Coroner, Constable, &c. As also of all Mayors, &c. who have the Authority of Justices of Peace by Charter.

*And*



*And because in some Cases Mayors, &c. by Act of Parliament, may act as Justices of Peace, I shall next Treat of the Powers given to Mayors, &c. by Acts of Parliament.*

**M**AYORS, &c. may convict unlicensed Ale-house-keepers, and levy the Penalties. 3 Car. Ale-houses.  
1. c. 3.

Chief Officers of Towns are to cause Quart and Pint Pots for the selling of Ale, to be mark'd after Examination, as to their being full Measure, or shall forfeit 5*l.* 11*ſ.* 12*d.* 3.

And by the Statute 23 Hen. 8. Mayors, &c. have Power to Assess the Prices of Ale and Beer.

Mayor, &c. may execute the Statute against riding Armour. armed. 2 Ed. 3. c. 3.

Mayor, &c. may inquire of Offences of Artificers and Artificers. Victuallers. 2 Ed. 6. 15 S. 3.

Mayors, &c. have Power to regulate the Assize of Bread. Bread, and examine into the Goodness of it; and if Bakers make unlawful Bread, they may give it to the Poor, and pillory the Offenders. 52 Hen. 3. c. 6. 8 Ann. 28.

Mayor, &c. may enquire of Offences against the Common Prayer. 1 Eliz. 2. S. 22. Common Prayer.

The next Magistrate may commit till the next Sessions such as shall abuse a Custom-Officer. 14 Car. 2. c. 11. S. 6. Customs.

Chief Magistrate of the Port, &c. may, on Complaint, grant a Warrant to search for uncustomed Goods. 12 Car. 2. c. 19. And the Constable may break open a House to seize the Goods in the Day-time, if Resistance be offered. 12 Car. 2. c. 14.

By Stat. 4 Jac. 1. c. 5. A Head Officer has Power on View, Confession or Proof, by one Witness, to convict any Person of Drunkenness, and Fine him 5*s.* or commit him to the Stocks for six Hours, and for the second Offence to bind him to the good Behaviour. Drunkenness.

Persons sitting tipling in an Ale-House, Inn, or Tavern, are likewise punishable by Mayors: Such Offenders shall forfeit 3*s.* 4*d.* for the Use of the Poor, or be set in the Stocks for four Hours. And the

- Alehouse keeper, &c. permitting Tipling, is liable to a Penalty of 10*s*.
- Games and Gaming. Mayors, and other Chief Officers, are to enquire into unlawful Games, against Stat. 33 *H. 8. c. 9. &c.*
- Mayors, &c. are likewise empowered to search Places suspected to be unlawful Gaming Houses; and Offenders of this Nature to forfeit 40*s*. and they may commit such as they find Playing at unlawful Games.
- Leather. Mayors, &c. may hear and determine Matters touching Leather, and Examine, &c. 1 *Jac. 1. 22. S. 50.*
- Orchards robbed, Hedge-breaking, &c. Mayors, &c. may punish Offenders against 43 *Eliz. c. 7.* for robbing Orchards, breaking Hedges, &c.
- Plague. Mayors, &c. may tax for Relief of Persons visited with the Plague, and may appoint Searchers, Watchmen, Keepers, and Buriers of the Dead, &c. 1 *Jac. 1. c. 31.*
- Servants. Mayors, &c. may hear and determine Matters concerning Servants and Apprentices. 5 *Eliz. c. 4.*
- Soldiers. Mayors, &c. may arrest Soldiers departing without License. 18 *H. 6. c. 19.*
- Sunday. Mayors, &c. may put in Execution the Statute of 3 *Car. 1. c. 1.* concerning the Lord's Day.
- Profane Swearing and Cursing. Mayors, &c. may punish Offenders for profane Swearing or Cursing. 21 *Jac. 1. c. 20.* 3 *Car. 1. c. 4.* but Stat. 6 & 7 *W. 3.* confines the Forfeiture of 1*s*. to Servants, Labourers, &c. Other Persons must pay 2*s*. and double, treble, &c. on repeating the Offence.
- Vagrants. Mayors, &c. may cause Vagrants, or other loose, idle, and disorderly Persons, Blind, Lane, &c. or pretending to be so, found begging in the Streets, to be whipp'd; on offending a second Time. 12 *Ann. c. 23.*
- Vessels. Mayors, &c. may assess the Prices of Beer Vessels, 8 *Eliz. c. 9.*
- Mayors, &c. may appoint Searchers and Gaugers of all Vessels for Salmon, Herring, and Eels. 11 *H. 7. c. 23.* 22 *Edw. 4. c. 2.*
- Weights. Mayors, &c. may punish Offenders touching false Weights, &c. 11 *H. 6. c. 8.* 7 *H. 7. c. 4.*
- Wood, Billers, and Faggots, &c. Mayors, &c. may inspect and assess the Assize of Tale-Wood, Billet and Faggot. 43 *Eliz. c. 14.*

## How Justices of the Peace may defend themselves against Suits.

**I**F any Action, Bill, Complaint, or Suit upon the Case, Trespass, Battery, or False Imprisonment, shall be brought any where against a Justice of Peace, &c. for any Thing done *Virtute Officii*, it shall be lawful for them, or any other who act in their Aid, Assistance, or Commandment, to plead the General Issue, and to give the special Matter in Evidence. If the Verdict pass for the Defendant, or the Plaintiff be Nonsuit, or discontinue, the Defendant shall have his double Costs. 7 *Jac. 1. c. 5.*

How Justices of Peace may defend themselves against Suits brought against them for any thing done *Virtute Officii*.

Which Statute was to continue but for seven Years, but it is since made perpetual by 21 *Jac. 1. c. 12.* And it is thereby enacted, That all Actions upon the Stat. shall be laid in the proper County where the Fact was done. And if upon the Trial the Plaintiff shall not prove the Fact done in that County where the Action is laid, the Jury shall find the Defendant Not guilty; and in Case of such Verdict, Nonsuit or Discontinuance, the Defendant shall have his double Costs.

A Constable may make a Deputy, who may plead the General Issue, and thereby take the Benefit of 7 *Jac. 1. c. 5.* as was resolved *M. 13 Jac. 1. B. R. Philips versus Winchcomb. Moore's Rep. 145. Bulst. p. 3. p. 77.*

Constable may make a Deputy who may take Benefit of 7 *Jac. 1. c. 5. and 13 Jac. 1.*

Hitherto of Generals: The following Heads relate to such particular Laws and Matters, as concern the Cognizance and Jurisdiction of the Justices of the Peace, under Alphabetical Divisions.

## Accessory.

**I**N High Treason there are no Accessories; for the Advisers, Counsellors, Perswaders and Assistants, as also the Receivers knowing thereof are all Principals.

In High Treason no Accessories. *Dalt. 394. Stamf. 40. Bro. Treason 19.*

*Note,* That the Act which makes a Man Accessory in Felony, the same makes him a Principal in High Treason.

*Stamf. 40.*



In the highest and lowest Offences there are no Accessaries, but all are Principals, as in High Treason ; so in the lowest, as Riots, Routs, Forcible Entries, and other Trespasses *Vi & Armis*.

In petty Treason there are Accessaries.

Dalt. 395.

Ibidem.

Accessaries before and Accessaries after.

Plowd. 100.

Br. Coron. 188, 228. & Indictment. 5.

Fitz. 309.

Stamf. 40.

Fitz. Coron.

325. Stamf. 37,

40. Crompt. 44.

4 H. 7. 31.

Dalt. 396.

In Petty Treason there may be Principals and Accessaries, as there are in Felonies.

There are two Sorts of Accessaries in Felony, the one before the Felony committed, the other after.

If a Procurer, Mover, or Consenter, &c. be present at the Time of the Felony committed, tho' he do nothing, he is Principal.

If one being present at the Killing or Robbing of a Man doth nothing, yet would have assisted his Companion, if there had been need, he is a Principal.

If one be present where Felony is committed, and doth not come in Company with the Felons, or be of their Confederacy, tho' he conceals it, 'tis no Felony in him, but only a Misprision and finable.

Two Thieves *A.* and *B.* set upon *C.* and *D.* to rob them ; *C.* flieth one Way, and *A.* pursueth him, but robbeth him not ; *D.* flieth another Way, and *B.* pursueth him and robbeth him : Adjudged by the whole Court of *K. B.* that *A.* is Principal in the Robbery of *D.* and was hang'd for it. *Hill 26 Eliz.*

Accessory the same Punishment as Principal. Dalt. Ibid.

*N. B.* That to be Accessary in Fact in Felony, whether before or after, is also Felony, and they shall have the same Punishment which the Principal shall have.

Lamb 279.  
280. Fitz. Cor.  
228 Co. 3.  
Inst 72. fed  
Quær. Hale's  
P. C. 223.  
Dalt. 396.

If any Offence be made Felony by Statute, it may have Accessaries both before and after the Fact committed, tho' the Accessaries be not mentioned in the Statute.

If *A.* command *B.* to lay hold upon *C.* and *B.* goes and robs *C.* this is no Felony in *A.* (if he be absent at the Time of the Robbery done) for this Command might have been done without any Robbery ; but if the Command had been to beat *C.* and *B.* kills him, *A.* is Accessary.

Dalt. ibidem.  
Plowd. 475.

If a Command be given to rob *J. S.* and the Party commanded attempting to rob him kill him, he that commanded the Robbery is Accessary to the Murder.

Acquittal of one Accessary discharges all the rest. *Raym.* 477.

Ibidem.

If *A.* counsel *B.* to kill *C.* by Poison, and he kills him with his Sword, &c. or to kill *C.* by the Highway, and he kills him in his House ; or to kill him one Day,

Day, and he kills him another : In all these Cases *A.* shall be Accessary to the Murder.

He, that commandeth or counselleth any unlawful Act to be done, shall be adjudged Accessary to all that shall ensue upon the same evil Act ; but not to any other distinct Thing. *A.* commandeth *B.* to steal a Horse, and he steals an Ox, or to rob a Man on the Highway of his Money, and he robs him in his House of his Plate ; or to burn the House of *B.* and he burneth the House of *C.* these are other Acts and Felonies than *A.* commanded to be done ; and therefore *A.* shall not be adjudged Accessary to them.

*A.* counselleth *B.* to poison *C.* and to that End *A.* buyeth Poison, and delivereth it to *B.* who tempereth it in an Apple, and delivereth to *C.* with Intent to poison him, and *C.* knowing nothing giveth the Apple to *E.* who eateth it and dieth thereof : Here *A.* is not Accessary to the Murder of *E.* yet it is Murder in *B.*

If *A.* counsels and commands *B.* to kill *J. S.* and afterwards countermands it, yet *B.* kills *J. S.* in this Case *A.* shall not be adjudged Accessary.

If *J. S.* counselleth a Woman to murder the Child in her Body (when it shall be born) and after, when born, the Midwife or other Person in Presence of the Mother, and by her Command killeth the Child, *J. S.* is Accessary, tho' done in his Absence.

*N. B.* That in Manslaughter, there can be no Accessary before the Fact ; for Manslaughter is always upon a sudden Affray : Accessaries in Petty Treason, Wilful Murder or Robbery, or to the felonious Burning of a Dwelling-house, or Barn with Corn, or Horse-stealing, shall not have the Benefit of Clergy. 4 & 5 *Ed.* 4. *Ph. & M. c.* 4. *Dyer* 183, 186. 11 *Co.* 35. 2 *Ed.* 6. *c.* 33. 31 *Eliz.* 12.

Where the Principal is acquitted of Murder and found guilty of Manslaughter, the Accessaries after the Fact shall answer as Accessaries to Manslaughter. *Moor's Rep.* 461. *Gorsad's Case.*

If the Principal be attainted of Murder, and then dies, and the Justices before whom the Accessary is tried have the Record of the Attainder before them, they may proceed against the Accessary, else not. *Mich.* 7 *H.* 4. *f.* 27.

Accessaries after the Offence are they, who knowing that another hath committed a Felony, do feloniously

He who commands or counsels an unlawful Act, answerable for the Consequence.

*Plowd.* 175.

*A.* counsels *B.* to poison one, and he poisons another, *A.* is not Accessary. *Ibidem.*

*A.* commands *B.* to kill *C.* and afterwards countermands it. *Ibidem.* *Dyer* 186.

In Manslaughter no Accessaries before the Fact. *Moor's rep.* 461, 666. *Co.* 4. 44.

Accessary after the Fact.

ously or voluntarily receive, harbour, or relieve him, &c. whether it be before Attainder or after. *Bro. Indi. 4.*  
*Br. Coron. 103.* To lend a Felon an Horse to go his Way, or other-  
*Lamb. 286.* wise to make his Escape, makes the Lender an Accessary. *Fitz. Coron. 427.* But to relieve a Felon in Prison, or to aid him by good Words, or sue for his Deliverance, or send a Letter for his Enlargement; this maketh not a Man Accessary to the Felony. *Bro. Coron, 103.* no more doth it to relieve, &c. a Person going under Bail, and bound to appear for his Trial. *Lamb. 286.*

A Feme Covert can't be Accessary to her own Husband, but to another she may. *Fitz. Coron. 383. Stamf. 26 & 43,* but not *e converso*.

A Servant may be Accessary either to his Master or Mistress, both before and after the Fact. *Stamf. 27*

*Bro. Esc. 42.* If a Man be the Cause of the Escape of a Felon, tho' he be his own Brother, he thereby becomes Accessary. *Stamf. 42.* But if one, whom I know to be a Felon, escape out of my House without any Furtherance, I am no Accessary.

Rescuer of a Felon a Principal Felon. *27 Affiz. 62.* He that rescues a Person arrested for Felony, is a principal Felon. *H. P. C. 116.*

If upon Hue and Cry, any Person arrest the Thief, and take the Goods from him, letting him go, he is an Accessary.

*Stamf. 287.* In Case of an Accessary after the Fact, it is requisite that it be Felony at the Time he becomes Accessary to it. For if *A.* wound *B.* mortally, and *C.* knowing thereof receive, &c. *A.* and then let him go before *B.* dies, he is no Accessary. *Stamf. 287.*

At Common Law no Man could be Accessary, &c. to a Felony in another County : But this is alter'd by Stat. 2 *Ed. 6. cap. 24.*

*Br. Cor. 104.* A Man may be an Accessary to an Accessary, if he receive him, &c. knowing thereof. *Br. Coron. 104.*

The Principal ought first to be attainted, because if he be acquitted, he can have no Accessary. *Hale's P. C. 221.*

*33 Eliz. Br. 57.* If a Man upon Malice incite a Madman to kill another, though such Person can have no Malice : Yet the Inciter shall be Principal, and shall not go unpunished.

*Dalt. 401. 9 Co. 68. b. and 119.* If the Principal be attainted erroneously, the Accessary notwithstanding shall be put to answer.

*H. P. C. 221. Ray. 477.* If the Principal die, be found Not guilty, or that he slew the other in his own Defence, the Accessary shall be discharged.

Where



## Accessory.

29

Where it is found that the Principal killed another Br. Cor. 15.  
*Se defendendo*, or Mis-adventure, the Accessary shall be discharged.

There are no Accessaries in Forgery, which is made Moor 666.  
Felony, but all are Principals. Moor 666.

If the Principal be burned in the Hand, the Accessary Booth's Case.  
must be discharged; for the Accessary ought not Cr. Car. 567.  
to be condemned, but where the Principal is attainted.

A Man may be Accessary to the stealing of his own Godb. 186.  
Goods, as if Confederate with another to steal Goods  
from his Bailiff, to the Intent to charge his Bailiff:  
This is Felony.

Three indicted on the Statute of Stabbing, and found Style 86.  
Guilty, and he that did it executed, the other two  
adjudged Accessaries.

If twenty Men go in Aid of the Sheriff, or any other Twenty going,  
ther lawful Act, if one of them kill another, the rest &c.  
are not Accessaries; otherwise if the Twenty go about Keil. 161.  
an unlawful Act.

Adulterer counsels the Woman to murder the Infant 7 Co. 9.  
when born, he is Accessary. 7 Co. 9.

They that receive the Mis-doers upon the Statute 12 Co. 21, 99.  
of 3 H. 7. c. 12. of stealing Women, are Principals,  
and by that Act, the Accessary before and after are  
Principals.

If Principal be convict of Felony, stand Mute or If Principal be  
Challenge peremptorily above twenty Jurors, the Accessary, &c.  
cessary may be proceeded against, as if such principal 1 Ann. c. 9.  
Felon had been attainted, notwithstanding such Principal  
be admitted to his Clergy, pardoned or otherwise  
delivered before Attainder: And such Accessary, if  
he be convict, if he stands Mute, or challenges as a-  
foresaid, shall suffer as if Principal had been attainted.  
1 Ann. c. 9.

Buyers and Receivers of stolen Goods knowingly, may Buyers and Re-  
be presented for a Misdemeanor before the Principal be ceivers of stolen  
convict; which shall exempt them from being punished Goods, &c.  
as Accessary, when the Principal is convicted.

The Principal must always be named in the Indictment a-  
gainst an Accessary and ought to be first convicted, otherwise  
the Accessary cannot be tried; for by the Acquittal of the one,  
the other is discharged. Vide Stat. 1 Ann. Sess. 2. c. 9.

If the Owner hath complained to a Justice of Owner Access-  
Peace, or to a Constable; or if the Felon be taken sary, &c.  
upon Hue and Cry, or otherwise, and then the Owner  
takes his Goods, or compounds with the Felon, or Con-  
sents to his Escape, this makes him an Accessary after the  
Fact,

## Accessary.

Fact, because he did once act against the Offender *Criminaliter*. But if in Pursuit he re-taketh his Goods, and suffereth the Felon to escape before any Complaint made to the Justice, or without being charged, &c. this is a Misdemeanor; for which he may be fined; but it doth not make him an Accessary; because *in initio* he has Liberty *agere civiliter vel criminaliter*.

If Principal do not appear, &c. Ibidem.

If the Principal doth not appear, the Accessary cannot be tried; if he is not attainted, the Accessary shall not be outlawed: If a Man is indicted as Accessary to two Principals, one of which happens to be convicted, and the other doth not appear; yet the Accessary shall be tried, and may be condemned, if found Accessary to the Party convicted, and may again be arraigned as Accessary to the other when he appeareth.

Principal and Accessary, &c.

If both Principal and Accessary plead to the same Felony, they may be tried by the same Jury; but Judgment must first be had against the Principal, and the Jury must be charged to acquit the Accessary, if they find the Principal not guilty.

Accessary, &c.

The Accessary shall not take Advantage of any Error in the Attainder of the Principal. 9 Rep. 68. Raym. 477.

N. B. The Principal in Murder is not bailable, but the Accessaries are, *i. e.* the Justices of Peace cannot bail; but the Judges of Oyer and Terminer may. Plowd. 55. Wingfield's Case.

Indictments, &c.

In an Indictment against an Accessary, you must set forth the Manner of the Felony, and that the Defendant knowing him to have done such a Felony, *Felonice recepit*, &c.

Criminal indicted, &c.

If a Criminal is indicted as Principal and acquitted, he cannot afterwards be indicted as Accessary before that Fact, because he who advises the Thing to be done, is in a Manner guilty of the Fact it self; and being acquitted of that, he is discharged of all Guilt before the principal Fact committed.

Indicted as Accessary, &c.

But notwithstanding such Acquittal, he may be indicted as Accessary after the Fact, because such an Accessary cannot be guilty of committing the Fact it self, for that was done before he knew any Thing of it.

When divers meet to do an unlawful Act, and one alone doth it, and the others present abet it, and are ready to assist him in doing it, they are all Principals. Pasch. 2 H. 8. Keilway f. 161. Plowd. 1 Mar. 98 a. But it is otherwise if a Man comes there by Chance, and

## Accessory. Affray.

31

and not with an Intent to join in doing an unlawful Act.

*Trin.* 14 *H.* 7. *f.* 31. 1 *Plowd.* 7.

If any Person shall receive, or buy knowingly any Bayers, &c. stoln Goods, or knowingly harbour or conceal Felons, he shall be taken as Accessary to the Felony; and being convict shall suffer Death as a Felon. Stat 5 *Ann. cap.* 31.

Where a Woman is taken away against her Will, Where a Woman within the Meaning of the Statute 3 *H.* 7. *c.* 2. tho' man is taken the Receivers of the Woman are Principals; yet the away, &c. Receivers of those who took the Woman are but Accessaries. *Trin.* 10 *Jac. Co.* 12. *Pl.* 100. *Co.* 3 *Inst.* p. 61. And those Accessaries shall have Benefit of Clergy, because it is after the Fact; for that Statute of 33 *Eliz.* *c.* 9. takes away the Benefit of Clergy from Principals, Aiders and Abettors before the Fact only. *Vide* the Statute.

None can be Accessary in petty Larceny.

*Cholmley*, Recorder of *Lincoln*, was turn'd out for trying the Accessary first. 1 *Vent.* 146.

## Affray.

**T**HIS is a Fighting between two or more, and What it is, differs from an Assault; for the one is a common Wrong, the other is an Injury done to a particular Person.

There must be Stroke given or offered, or a Wea-Stroke given, upon drawn, or otherwise it is not an Affray. 3 *Inst.* &c. 158.

'Tis to be considered upon this Head, } What may be done, { 1. By the Constable.  
2. By a Justice of Peace.  
3. By a private Person.

1. *By the Constable.*

He may command the Affrayers to depart, and upon Refusal may commit them: If they resist he may call others to his Assistance, and may justify the wounding in such Case: And if either he or his Assistants are killed, 'tis Murder. If 'tis a great and dangerous Affray, he may commit them 'till they find Sureties for the Peace.

If



Carry him, &c. If any Person is wounded, he may commit the Offender, if he will, he may carry him before a Justice, who may commit him, if he will not give Security to appear at the next Sessions.

May take them out of a Franchise, &c. He may take them out of a Franchise in the same County: He may pursue them into another County; but then when taken, he must carry them before a Justice of Peace, for he cannot commit out of the County.

May put them in the Stocks, &c. If he is assaulted doing his Duty, or if the Affray be in his Presence, he may put them in the Stocks, 'till he can get Assistance to carry to Gaol; or he may secure them according to the Quality of the Offenders, 'till he can bring them before a Justice, or to Prison, but not in his own House. *Dalt. 37. Lamb. 133.*

When Affray, &c. If there is Threatning to kill, or beat, or hurt, though this is no Affray, yet he may apprehend the Persons, and carry them before a Justice: But where an Affray is over, he cannot apprehend any one without a Warrant from a Justice, unless some Person is dangerously wounded.

If he neglect, &c. If he neglect his Duty in not endeavouring to suppress an Affray, &c. it is presentable at Sessions, and he ought to be fined. *H. P. C. 135. Inst. 158.*

Constable hurt, &c. Lamb. 141. If a Constable is hurt in an Affray, he may have an Action of Trespass, and have good Damages; but the Affrayers shall have no Remedy.

### 2. By the Justice.

If the Affray be in his Presence, he may commit 'till they find Sureties.

If any Person is dangerously hurt, he may, within a Year and a Day after the Hurting, commit or bind him over, 'till it appear what will become of the Party hurt; and it is not Discretion to Bail the Offender, though he may do it by Law.

He may *ex officio* require those who strike or threaten in his Presence to find Sureties for their Good Behaviour.

If an Assault be made upon a Justice or Constable, they may defend themselves and apprehend the Offenders, and make them find Sureties for the Peace; the Justice may apprehend them, and send them to another Justice to be sent to Gaol: The Constable may commit to the Stocks, and after carry to the Justice.

## 3. By a private Person.

Any Man may stay the Affrayers, who are about to assemble to break the Peace, 'till the Heat is over, and deliver them to a Constable.

Likewise any Man may apprehend an Offender, who hath dangerously wounded another; and carry him before a Justice, or to Gaol. *H. P. C.* 135. *Dalt.* 35. or may deliver them to a Constable.

If two be fighting, and there be more looking on, who do not use their Endeavours to part them, if one be killed, the Lookers on may be indicted and fined. *Noy's Rep.* 50.

Challenge to fight by Word or Messuage is an Affray. *Sid.* 186.

## An Indictment for an Affray.

**T**HE Jurors for our Sovereign Lord the King, do present, That A. B. of (such a Place) (in such a County, Carpenter) or whatever his Addition be, and C. D. (of such a Place,) &c. on the Tenth Day of April, in the Eighth Year of the Reign of our said Sovereign Lord the King, (or of his present Majesty) at St. Edmundsbury, in the County aforesaid, with Force and Arms (that is to say) armed with Swords, and other war-like Instruments, and unlawfully assembled together (by Turns) made an Assault and an Affray, to the Terror and Disturbance of diverse Subjects of our said Sovereign Lord the King, then being there, and to the evil and pernicious Example of the Liege People of our said Sovereign Lord the King, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

## Alamodes and Lustrings.

**A** Lamodes and Lustrings shall not be brought into any Port but London, without Licence from the Commissioners of the Customs for importing the same. *8 & 9 and 10 W. 3. c. 43.*  
Commissioners to seal Alamodes, &c. imported, and keep an Entry thereof; Alamodes, or, &c. brought into any other Port, forfeited: Persons bringing Alamodes,

D

or,

## Alamodes and Lustrings.

or, &c. contrary to this Act, and an Act made 8 & 9 W. 3. shall forfeit 500*l*. Officers of his Majesty's Ships importing Alamodes, or, &c. besides the Penalties in the Act aforesaid, shall be incapable of serving his Majesty, &c. Mariners making Discovery, &c. shall be discharged the King's Service, if desired, and have the Benefits given by this Act besides. Persons altering or counterfeiting Custom-house Seal forfeit 500*l*. and stand in the Pillory two Hours. Person buying or selling Alamodes, or, &c. sealed with counterfeit Seals, or having in his Custody knowingly, and not discovering, forfeits Goods and 100*l*. Any Person by Warrant from one Justice may go with Constables into any Shop, or, &c. and search for Alamodes, or, &c. and seize the same so fraudulently imported, sealed and marked as aforesaid. In Case of Dispute, &c. Proof must lie on Importer; for second Offence double the Sum. Two Thirds of the Forfeitures to the King, remaining Part to Seisor or Prosecutor. King to bear the Charge of Prosecution out of his Share. Prosecution to be within two Years.

8 & 9 and 9  
& 10 W. 3.  
c. 43.

See Lustrings.

## Alehouses.

The true Use  
of Alehouses,  
Inns, &c.

He may be in-  
dicted.

Dalt. 30.

Before 5 Ed. 6.  
lawful, &c.  
Ibid.

**T**HE Use of Alehouses and Inns was for the Relief and Lodging of Travellers, and to supply the Wants of those who are not able to provide great Quantities of Drink and Provision; and if any Alehouse-keeper or Inn-keeper refuse to lodge a Traveller, the Justice of Peace may compel him to it, or the Constable may present it as an Offence next Sessions, in order to suppress it, or the Party may have an Action on the Case; but they cannot be compelled to sell Victuals, unless the Traveller tender Money, if required.

Before the Stat. 5 E. 6. it was lawful for any to keep an Alehouse without a License; for it was a Means of Livelihood, and not prohibited by any Law; but if kept in a disorderly Manner, it was indictable as a Nuisance. *M. 13 W.*

As Alehouses increased and were used to disorderly Purposes, so several subsequent Laws were made to suppress both the Numbers and Disorders.



These Laws generally concern, { 1. Licensing.  
2. Disorders.  
3. Officers.

## 1. Licensing.

The first was made *Ann. 11 H. 7.* by which Power is given to two Justices to reject the selling Ale.

There was no further Provision made in this Matter By 5 & 6 Ed. 6. till about fifty-six Years after, and then *Anno 5 & 6 Ed. 6.* a Law was made, that no Man should keep an Alehouse without being licensed either in Sessions, or by two Justices (*Quorum unus.*) No Man to keep an Alehouse, &c.

The Punishment was Commitment for three Days without Bail, not to be enlarg'd 'till the Offender entered into a Recognisance with two Sureties not to keep an Alehouse; which Recognisance being certified to the next Sessions, was to be a sufficient Conviction to fine him 20s.

This Statute gave Power to the Sessions, or the two Justices to put down Alehouses at Discretion, and to take Recognisances of Alehouse-keepers not to use unlawful Games, or keep Disorders in their Houses. This Stat. gave Power to Sessions, &c.

The Conviction upon this Statute ought to be by Way of Presentment or Indictment at the Sessions, and the two Justices ought not to commit 'till Conviction.

Yet there are some Books which tell us that an Indictment will not lie for keeping an Alehouse without a License, because this Statute directs in what Manner the Offender shall be punished, viz. by committing him. Palm. 388. 2 Rol. Rep. 398. 4 Mod. p. 144. Trin. Term. 4 W. & M. B. R. Rex & Regina versus Marriot, Shower's Rep. p. 398. Hill. 8 Will.

But because many Alehouse-keepers in those Days were not able to pay that Forfeiture, and it was seldom levied by Reason of Poverty, which made People unwilling to present the Offenders, therefore a farther Punishment was added by 3 Car. 1. which not only inflicts the Forfeiture of 20s. to the Use of the Poor, to be levied by the Constable or Church-warden by Warrant of a Justice, before whom the Offence was proved, and which Distress may be sold three Days after; but it provides, that if no Distress can be taken, the Justice shall deliver the Offender to the Constable to be whipped. A further Punishment inflicted by 3 Car. 1.

This Statute appoints the Conviction to be by Confession, View of the Justice, or Oath of two Witnesses.

## Alehouses.

For the second Offence, committed to the House of Correction for a Month.

By Stat. 5 & 6 E. 6. & 3. c. 1. For the third, not to be enlarged but by Order of Sessions, provided such Offender shall not be punished twice for the same Offence, *viz.* not both.

That the Justice must not make a Warrant for less than 20s.

Husband of a Feme Covert, &c. may be punish'd.

Sellers of distilled Liquors must have a License like Alehouses.

12 & 13 W. 3.

That Feme Covert keeping an Alehouse without License, her Husband may be punished.

And by a late Statute Persons are prohibited to sell Brandy, or other distilled Liquors by Retail, to be drank in their Houses without a License, in the same Manner as common Alehouse-keepers are licensed; and the Offender is made subject to the same Rules, Penalties and Forfeitures, as those are who sell Drink without a License.

By an Act made *Anno 2 Geo. 2.* it is enacted, That no License shall be granted to keep a common Inn or Alehouse, or to retail Strong Waters but at a General Meeting of the Justices acting in the Division where the Party dwells, to be holden for that Purpose on the 29th of *September*, yearly, or within twenty Days after, or at any other General Meeting for the Division: And all Licenses which shall be granted to the contrary hereof shall be void.

But nothing in this Act shall alter the Method or Power of granting Licenses in any City or Town Corporate.

## 2. Disorders.

Alehouse-keepers not to suffer Townsmen to sit tippling, on Forfeiture of 10s.

Of being disabled to keep an Alehouse for 3 Years.

Townsmen tippling forfeit 3s. and 4d. or to be set in the Stocks, four Hours.

By the Statute 1 Jac. 1. Alehouse-keepers, &c. are prohibited to suffer Townsmen to sit tippling, upon Forfeiture of 10s. to the Poor where the Offence was committed. 1 Jac. 1. c. 9.

Constable or Church-warden may levy it by Distress, which may be sold after six Days; and if that cannot be had, the Offender is to be committed till paid.

A farther Punishment was added by 21 Jac. c. 7. that the Offender should be disabled to keep an Ale-house for three Years afterwards.

By 4 Jac. 1. 55. Townsmen sitting tippling, forfeit 3s. 4d. for the Use of the Poor, and not being able to pay it, shall be put in the Stocks four Hours, the Punishment must be within six Months.

Vintner keeping an Inn, and Inn-keeper are within this Statute *per* 1 Car. 14.

The Acts last mentioned relate only to Townsmen sitting tippling.

But

But by 21 *Jac.* 1. c. 7. Any Person, be his Habitation where it will, is prohibited to sit tippling; the Conviction by the former Laws was to be by two Witnesses, but by this Statute one Witness, or Confession of the Party, is sufficient to prove the Breach of 1 *Jac.* 9. and 4 *Jac.* 5. and the Oath of the Party confessing shall be sufficient to convict any other offending at that Time; and a farther Punishment is added, *viz.* That the Offender shall be disabled to keep an Alehouse within three Years next after.

Any Person  
whatever not  
to sit tip-  
pling.

Upon this last Statute it hath been held, that if an Alehouse be suppressed, and shall afterwards within three Years be licensed by two other Justices out of Sessions, the first Justices who suppress'd it may do so again, and commit the Party for disobeying their Order. *Hut.* 99. 8 *Co.* 32.

If set up again  
by two other  
Justices in 3  
Years, two first  
Justices may a-  
gain suppress it.

But there is some Difference in the Manner of suppressing an Alehouse which is licensed, and one which is not; for in the first Case the Proceedings must be upon the Recognizance, the Condition whereof must be broken, or it may be by Indictment, and then the Disorders must be proved, and such as make a Nuisance. 1 *Salk.* 45.

Difference be-  
tween suppress-  
ing an Ale-  
house licensed,  
and one that is  
not.

An Order of Suppression for keeping an Alehouse was made, and in the County of *Flint* was only in the Margin, but not in the Body of the Order, and quash'd; so adjudg'd in the Case of the Parish of *Downton*: *Cur.* it is good in a Civil Action, but not in an Order.

Where an Alehouse is kept without License, the Justices may suppress it at Discretion, which may be done by Commitment of the Owner, and the want of License shall only come in question, and not any Reason why it was denied, 1 *Salk.* 45, 46. and no Appeal lies for denying a License. *M.* 13. *W.* 3.

The Statute 1 *Jac.* c. 9. against suffering Tippling in their Houses, enacts, That the Offender may be bound in a Recognizance to keep good Order, or may be committed as Alehouse-keepers without License, or indicted at Sessions.

Sufferer of  
Tippling may  
be bound in  
Recognizance  
or committed.  
*Ibidem.*

An Inn-keeper not qualified cannot be suppressed, but by Indictment for a common Nuisance at Sessions, and the Judgment must be to disable him to keep that very Inn; but it may be continued and kept as an Inn by another Person of good Repute. *Hutt.* 100.

Inn-keeper not  
qualified can't  
be suppressed  
but by Indict-  
ment. *Ibidem.*

Alehouses ought to be in some publick Street of the Town, and not in By-Streets, or remote from the Town; for if built in any such Places, or the Inn-

Where Alehou-  
ses are to be. *Ja-  
cob's Just.* 14.



If any sell Ale to unlicensed Alehouse-keeper, forfeits 6 s. and 8 d. per Barrel.

Justices to meet once a Year to grant Licenses, and thereon to take Recognizances, which are to be ingross'd in Parchment, and Copies delivered to Alehouse-keepers, and then sent to the Clerk of the Peace, who are to transmit a Brief thereof yearly.

Ale to be sold in Standard Measure. 11 & 12 W. 3.

1 Jac. 1. c. 9.

Collector, &c. to provide Measures in all Market-Towns. Chief Officer to mark the Measures.

keeper be a lewd Person, or of ill Fame, it may be presented or indicted as a common Nuisance, and be suppressed.

If any Person sell Ale to an unlicensed Alehouse-keeper more than for the Use of his own Family, he forfeits 6 s. 8 d. per Barrel, to be divided between Poor and Prosecutor, the Prosecution must be at Quarter-Sessions. 4 Jac. 1. c. 4.

By Statute 16 Jac. 1. the Justices are to meet once in a Year, either in April or May, and call before any two of them (*Quorum unus*) such Persons who sell Ale in their Divisions, and inform themselves who are fit to keep Alehouses, and then proceed to license them.

And on granting the Licenses, they are to take a Recognizance, with Sureties for keeping good Orders, &c.

These Recognizances, and the Conditions of them are to be ingrossed in Parchment by the Clerks attending, and examined Copies to be delivered to the Alehouse-keepers.

Then the Recognizances are to be sent to the Clerk of the Peace, in order to be entred at the next Quarter-Sessions, to entitle the King to the Forfeitures.

Persons not licensed at the Meeting of the Justices may be licensed afterwards; but none to be licensed who hath not a convenient Lodging for a Traveller.

By Statute 11 & 12 W. 3. Ale is to be sold by the full Ale Quart or Pint, according to the Standard in the Exchequer, and in a Vessel stamp'd or mark'd, either from the Measure in the Exchequer, or in some City or Market-Town where an Ale Quart shall be made from the said Standard, and kept for that Purpose, under the Penalty of forfeiting not exceeding 40 s. nor under 10 s. for every Offence.

Alehouse-keepers, Inn-keepers and Victuallers are prohibited selling less than one Quart for a Penny, under Penalty of 20 s. by 1 Jac. c. 9. & 21 Jac. 1. c. 7. but this suspended during the Continuance of the additional Excise, per 1 W. & M. c. 24.

The Collectors of Excise are to provide a full Ale Quart and Pint for every Market-Town within their respective Divisions, or they forfeit 5 l.

The chief Officer of such Town shall cause the Pots to be marked, taking one Farthing for each Vessel; if he neglects, or refuses so to do, he forfeits 5 l. and treble Damages shall be recovered by the Party grieved, and full Costs.

A Moiety of these Forfeitures go to the Poor of the Parish where the Offence is committed, the other to the Prosecutor.

The Conviction is to be by Oath of one Witness, before one or more Justices, and the Prosecution must be in thirty Days after the Offence, and the Penalty is to be levied by a Warrant from the Justice by Distress, &c.

If an Inn-keeper, or Alehouse-keeper, sells in a Vessel not Stamp'd, or refuses, in bringing in the Reckoning, to give an Account of the particular Number of Quarts or Pints, he shall not detain any Goods, if the Guest refuses to pay the Reckoning, but shall be left to his Action at Law.

If an Action be brought for putting this Act in Execution, it must be laid in its proper County where the Fact was done and not elsewhere; and if the Plaintiff is Cast, he must pay treble Costs.

The Justices must give this Act in Charge at every Sessions; but it shall not extend to Colleges or Halls in the Universities.

Conviction, one Witness, and Prosecution in 30 days.

If Alehouse-keepers sell in Vessels unmarked, or refuse to give an Account how many, &c. can't detain Goods, &c. Action on this Act must be laid in proper County.

## 3. Neglect of Officers.

Officers neglecting to levy the Penalties upon 1 Jac. 1. c. 9. or if no Distress can be taken, and they do not certify the same within twenty Days, they forfeit 40s. to the Use of the Poor, to be levied by Distress, by Warrant of one Justice; and if that can't be had, then to be committed till paid.

The Conviction must be by one Witness upon Oath before one Justice.

Receiver of the Penalties shall be accountable to succeeding Officers.

By 3 Car. 1. c. 30. Officers neglecting to execute a Warrant of the Justice for the 20s. for selling Ale without License, or refusing to whip the Offender, if no Distress can be taken, forfeit 40s. to the Poor, or to be committed without Bail.

A Drunkard may be punished in Ecclesiastical Court, or by a Justice of Peace. Godb. 514. 4 Jac. 1. c. 7.

Husband must be joined with the Wife in an Indictment for the Wife's keeping a disorderly House, because he must pay the Fine. Hill. 20 & 21 Car. 2.

There is no License requisite for any that sell Beer or Ale in any Place where Fairs are kept, or where Forcuses are kept, to sell to them. 5 & 6 Ed. 6. c. 25. 3 Car. 1. c. 3.

Officers neglecting to levy Penalties on 1 Jac. 1. c. 9. forfeit 40s.

Conviction by one Witness.

Officers neglecting to execute a Warrant on 3 Car. 1. c. 30. forfeit 40s. Drunkard punishable in Ecclesiastical Court, or by a Justice, Godb. 514. 4 Jac. 1. c. 7. Husband joined with Wife in an Indictment, &c. No License necessary to sell Ale in Fairs.

## Alehouses.

An Inn-holder letting his Beer to his Tapster for 14s. per Barrel, he himself paying but 8s. is indictable. 9 Jac.

1. *Seff. P. Middlesex.*

Alehouses kept by Bailiffs, &c. to be suppressed. Bond's Justice, 42. Dalt. c. 7.

7 & 8 W. 3. no Alehouse keeper to use any Plate but Spoons.

Selling Ale without License no Offence at common Law. Sands Rep. 1. Part 249. Falkner's Case.

But a Crime to sell in cheating Measure at common Law.

Indictment for selling Ale on Sunday quash'd.

Travellers have peculiar Privileges, and therefore Inns chargeable in many Cases. 8 Rep. Caley's Case.

The keeping of an Alehouse, Tavern, &c. by any Serjeant, Bailiff, or other Officer, is mischievous, and to be suppressed, and this is usually practised in B. R. Vid. Stat. 22 & 23 Car. 2. c. 20. against carrying Persons arrested into Alehouses or Taverns, to their Charge.

No Person keeping an Inn, Tavern, Alehouse or Victualling-house, shall publickly use, or expose to be used, any manufactured Plate whatsoever (except Spoons) under the Penalty of Forfeiting the same, or the Value thereof, with full Costs of Suit to him that shall sue for the same in any Court of Record at Westminster. 7 & 8 W. 3. c. 10.

A Person was Indicted for keeping of an Alehouse and selling Ale without License; but the Indictment not concluding *contra formam Statuti*, it was quash'd. Because selling Ale without a License was no Offence at Common Law, but made an Offence by Stat. 5 & 6 Ed. 6. & 3 Car. 1. c. 3. Sand. Reports, 1 Part, 249. Faulkner's Case.

But Term Pasc. 21 Car. 2. a Man was Indicted for selling Ale in unsealed Pots, or unlawful Measure, without concluding *contra formam Statuti*, and the Court declared, upon a Motion, to quash the Indictment, that just Measures were by the Common Law, and the Statutes only ascertained them. Sid. 409. Pl. 1. Pasf. 21 Car. 2. The King against Burgoine. Ventr. Rep. 13. S. C.

A Motion was made to quash an Indictment for selling Ale on Sunday, in Time of Divine Service, because by the Statute of Car. 2. a summary Way before two Justices was directed, and quash'd accordingly. Hill. 5. Ann. Regin. versus Holmes.

Inns were allow'd for the Benefit of Travellers, who have certain Privileges while they are on their Journeys, and are in a more peculiar manner protected by the Law; 'tis for this Reason that the Inn-keeper shall answer for those Things which are stoln *infra hospitium*, tho' not deliver'd to him to keep, and tho' he was not acquainted that the Guest brought the Goods to the Inn; for it shall be intended to be thro' his Negligence, or occasioned by the Fault of him or his Servants.

So if he puts a Horse to Pasture without the Direction of his Guest, and the Horse is stoln, he must make Satisfaction.

But



But if a Neighbour, who is not a Traveller, lodges in an Inn, and loseth his Goods, or if the Guest is robbed by his own Servant in the Inn, or by any one who came thither with him, or by leaving his Goods in one Room, when the Inn-keeper desired him to leave them in another, in such Cases he shall not be answerable.

But the Sessions cannot suppress an Alehouse licensed by two Justices unless 'tis for Disorder, for by the Stat. 5 & 6 Ed. 6. they have no such Authority.

By Stat. 12 G. 1. c. 12. a Duty is granted of not less than 20s. nor more than 6l. to be paid yearly by every Victualler and Retailer of Beer and Ale in *London* and *Westminster*, and within the weekly Bills of Mortality, leviable by Commissioners, who are to grant Permissions or Authorities for retailing Beer or Ale, the not taking out whereof incurs a Forfeiture of 20l. doth not take away or diminish the Powers by Law vested in Justices of the Peace within *London* and *Westminster*, in licensing and regulating Inn-keepers, Victuallers, and Retailers of Beer and Ale.

Commissioners shall have the same Power as Commissioners of Excise.

Any Person sued for putting this Act in Execution may plead the general Issue, and give the Statute and the special Matter in Evidence; and if the Plaintiff be Non-suit, or the Defendant obtain Judgment on a Demurrer or a Verdict, he shall have treble Costs.

## A License to keep an Alehouse.

Staff. ff. **W**E whose Names are hereunto subscribed, s. 3 & 6 Ed. 6. being two of his Majesty's Justices of Peace for the said County, do, according to the Form of the Statute in that Case made and provided, admit and allow T. P. of &c. Victualler, to keep a common Alehouse in that House where he now dwelleth, known by the Sign of  
 for and during the Space of one whole Year next ensuing the Date hereof, so as the said T. P. do not use any unlawful Games, during the said Time, within the aforesaid House, and so as he keep good Order and Rule therein so long as it shall continue a common Alehouse, as aforesaid.  
 Given under our Hands and Seals, &c.

## A Recognizance upon keeping an Ale-House.

Glouc. ff. **B**E it Remembred, *That on the second Day of May, in the first Year of the Reign of our Sovereign Lord George the first, by the Grace of God King of Great Britain, France and Ireland, Defender of the Faith, &c. and in the Year of our Lord Christ 1715, at Yate in the County aforesaid; A. B. of Yate aforesaid, Carpenter, and C. D. of such a Place, Bricklayer, and E. F. (of such a Place &c.) came before us W. B. and I. H. Esquires, Justices assign'd to keep the Peace of our said Sovereign Lord the King in the County aforesaid, and acknowledged themselves to owe (or be indebted) to our said Sovereign Lord the King, in the Manner and Form following; (that is to say) the said A. B. in 20l. and the said C. D. and E. F. each in ten Pounds of Lawful Money of Great Britain, to be levied of their several Goods and Chattels, Lands and Tenements respectively, to the Use and Beboof of our said Sovereign Lord the King, his Heirs and Successors, if Default shall be made in the Performance of the Condition hereunder written.*

**T**HE Condition of this Recognizance is such, That whereas the above bound *A. B.* is allowed by the Justices above named, to keep a common Alehouse in the House wherein he now dwelleth, known by the Sign of, &c. for the Term of one Year from the Date hereof: If therefore the said *A. B.* shall not, during the Continuance of the said License, permit or suffer any unlawful Games to be used in his House, or any Disorders to be committed therein, but shall, during the said Term, keep and maintain good Order and Government in the same, then this Recognizance to be void, or else to remain in full Force.

*Capt' & Recogn' die & anno  
prius supradict' cor' nobis*

W. B.  
H. J.

## A License to sell Brandy.

Bedf. ff. **W**E his Majesties Justices of the Peace for the said County of Bedford, whose Names are hereunto subscrib'd (quorum unus) do allow and license John Banks of Ampthil in the said County, Shopkeeper, to sell Brandy or other distill'd Liquors by Retail to be drank in the same House wherein the said John Banks now dwells, and not elsewhere, for the Space of one whole Year next ensuing the Date hereof, or until the next general licensing of Sellers of Brandy or other distill'd Liquors for the said County, so as no unlawful Games, Drunkenness, or any other Disorder be suffered in the House, Yard, Garden, or Backside of the said John Banks, but that good Order and Rule be maintain'd therein according to the Laws of this Realm made and provided in that behalf: For the due Observance whereof, the said John Banks hath now entred into Recognizance with Sureties, according to the Statute. Given under our Hands and Seals, this 4th Day of September 1731, and in the Fifth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c.

## A Warrant against a Person for keeping an Alehouse without License.

To the Constable of, &c.

Staff. ff. **W** Hereas We, whose Names are hereunto subscribed, two of his Majesty's Justices of the Peace for the County aforesaid, have been credibly inform'd, That T. P. of, &c. doth keep a common Alehouse without License, contrary to the Law in that Case made and provided: These are therefore to will and require you to bring the said T. P. before Us, or one of Us, or some other of his Majesty's Justices of the Peace for this County, to be dealt withal according to Law: And hereof fail not. Given under our Hands and Seals. Two Justices,  
Quorum unus.

A War-



A Warrant against an Alehouse-keeper  
without License, upon the Statute of  
3 Car. 1. cap. 3.

3 Car. 1. The  
first Convicti-  
on either upon  
View, Confes-  
sion, or Oath  
of two Wit-  
nesses before  
one Justice.

Where he is  
taken, or  
where offence  
done.

Staff. ff. **W** Hereas T. P. of, &c. Viſtualler, was  
this present Day lawfully convicted before  
me, for keeping of a common Alehouse in the Parish of, &c.  
not being thereunto lawfully licensed according to the Form of  
the Statute in that Case made and provided, by reason where-  
of he hath forfeited to the Poor of the said Parish the Sum of  
20 s. of lawful Money: These are therefore to require you, or  
one of you, to levy the said Forfeiture, by distraining the  
Goods and Chattels of the said T. P. and that you detain  
the same for the Use aforesaid; and in Default of Payment of  
the said Sum of 20 s. within three Days after such Distress  
taken, that then you appraise and sell the same to satisfy  
the said Forfeiture; and if the said T. P. shall not have suf-  
ficient Goods, upon which the said 20 s. may be levied as  
aforesaid, or shall not pay the same within six Days after the  
Date hereof, that then you the said Constable do openly whip,  
or cause the said T. P. to be whipped in the Parish of, &c.  
for the said Offence: And hereof fail not, &c.

Second and Third Conviction.

**W** Hereas, &c. (ut supra, to the Word provided)  
And whereas the said T. C. hath been once be-  
fore lawfully convicted of the like Offence, so that this is  
the second Time of his Offending: These are therefore to re-  
quire and command you to apprehend the said T. C. and  
safely convey him to the House of Correction, and deliver  
him to the Keeper thereof with this Warrant: Hereby com-  
manding you the said Keeper to receive the said T. C. into  
your Custody and House, and to keep him there for the Space  
of one Month, and that you deal with him as an idle and  
disorderly Person.

In the third Conviction say, to keep the said T. C. in  
your Custody until he shall be delivered from thence by the  
Order of the Justices in their general Quarter-Sessions; and  
that during that Time you deal with him, &c.

## Alehouses.

45

### A Warrant against an Alehouse-keeper for suffering Tippling in his House.

Staff. ff. **W** Hereas it hath been duly proved before me this present Day, That T. P. of, &c. Victualler, did upon the 27th Day of August last past permit and suffer J. S. and J. K. both of, &c. to remain and continue drinking and tippling in the Alehouse of the said T. P. in the Parish aforesaid, contrary to the Form of the Statutes in that case made and provided: These are therefore to require you the said Constable or Church-Wardens, to levy by Distress of the Goods and Chattels of the said T. P. the Sum of Ten Shillings for the said Offence, for the Poor of the said Parish, and to detain the said Goods for the Space of six Days next after such Distress taken, if the said Forfeiture of Ten Shillings shall not be paid to you within that Time; and that afterwards you appraise and sell the said Goods, to satisfy the said Forfeiture, rendring the Surplusage to the Owner. And hereof fail not, &c.

1 Jac. cap. 9;  
21 Jac. c. 7.  
One Justice,  
Vew, Confes-  
sion, or Oath of  
two Witnesses,  
and Prosecuti-  
on within six  
Months, but  
by 21 Jac. c. 7.  
one Witness is  
sufficient. 1  
Car. c. 4.  
Vintners are  
within this  
Act, and the  
Alehouse-keep-  
er is disabled  
for 3 Years.

Vide more of Alehouses in respect to Excise, under Title  
**Brewers.**

### An Indictment for keeping of a disorderly House.

Suffex, ff. **T**HE Jurors, &c. do present, That T. P. of (such a Place) Victualler, is a Man of ill Conversation and Behaviour, and a Disturber of the Peace of our said Sovereign Lord the King, and that he, on the tenth Day of August, in the seventh Year of the Reign of our said Sovereign Lord the King, at (such a Place) in the County aforesaid, kept, held, and occupied a certain common Tippling-house, and on the aforesaid tenth Day of August, in the Year aforesaid, and also on several Days and Nights, as well before as afterwards, at H. aforesaid in the said County, into the same Tippling-house received and entertained diverse Men suspicious and of an ill Conversation, there drinking, swearing and playing at unlawful Games, (that is to say) at Cards and Dice, at all Hours, as well in the Night as Day, whereby his Neighbours and other Leige People of our said Sovereign Lord the King, there, were greatly vexed, disquieted and grieved, to the ill Example of other Subjects of our said Sovereign Lord the King, and against the Form of the Statute in  
such

*such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.*

### A Warrant to suppress an Alehouse.

5 & 6 Ed. 6. cap. 25. Two Justices, Quorum unus, may discharge and remove where they think fit the common selling of Ale. If he continue to sell afterwards, 'tis a Contempt, and upon Proof, any Justice may bind him to his good Behaviour, and to appear at Sessions; and if he cannot find Sureties, then to commit him.

Staff. ff. **W** Hereas we are credibly informed upon the Complaint of several Persons, That T. P. of, &c. doth suffer rude and disorderly Persons to frequent his House in the Parish of, &c. being at this Time a common Alehouse, wherein they usually commit many great Disorders to the Disturbance of those who live near the said Place; for which Reason we R. B. and W. N. two of his Majesty's Justices of Peace for the said County, one whereof is of the Quorum, do think it convenient to discharge and put away the common Selling of Ale and Beer, or other Liquors in the said House: These are therefore to require you forthwith to go to the said T. P. and to charge him from henceforth not to sell or suffer to be sold any Beer or Ale or other Liquors in the said House, and that you also cause the Sign of the said House to be pulled down. And hereof fail not, &c.

### A Certificate for continuing an Alehouse-keeper.

To the Right Worshipful his Majesty's Justices of the Peace for the County of, &c.

**W**E whose Names are hereunto subscribed, Inhabitants of the Parish of H. within the Division and County aforesaid, do humbly certify, That the now Dwelling House of A. B. Victualler, is conveniently situated there for a Victualling House, and that he is of good Name and Fame, and the same House is well accommodated for Entertainment of Travellers, and that he keepeth good Rule therein, and therefore we humbly desire your Worships that his License for keeping the said Victualling House there may be continued.

G. D.  
E. F.

A War-



## A Warrant for renewing Licenses of Alehouses.

**T**Hese are in his Majesty's Name to command you to summon all the Licensed Alehouse-keepers, Victuallers, and others within your Hundred, as commonly use Selling of Ale, Beer, &c. personally to appear before Us at, &c. upon, &c. at Ten of the Clock in the Forenoon of the same Day; and to bring with them their former Licenses and Certificates of their civil Demeanors, and Fitness for that Purpose; to be new licensed, the same Certificate to be signed by two substantial, honest and discreet Inhabitants of the respective Parishes where they dwell; and that you have the Names of the Persons you shall have so warned, and also the Names of the several Parishes and Places where their Houses are situated, and by what Signs the same are known; to the End that such of them may be continued, and such of them suppressed as shall be thought fit. Given under our Hands, &c.

## Annuitant and Annuity, &amp;c.

**M**inister and Church-Wardens to give a Certificate under their Hands, that the Nominee of the Annuitant was alive on the Day the Payment became due, or before one Justice upon Oath. 2 Ann. c. 3.

Certificate that Annuitant was alive when Payment became due. 2 Ann. c. 3.

## Appeals.

**T**H O' Appeals do not strictly belong to the Office of a Justice of Peace, yet in regard they have relation to some Felonies, it may not be improper to say something concerning them.

Appeals may be brought either by Writ or Bill. Appeals by Writ or Bill, &c.  
Where the Appeal is brought by Writ, there must be fifteen Days between the *Teste* and Return; the Reason is, because the Defendant may have Time to appear at *Westminster*, from any Part of *England*, by computing twenty Miles to a Day's Journey, for 'tis necessary he should appear in Person, because the Appellant must count *in propria persona*, and not by Attorney; and if he is not present, he may be demanded and nonsuited, but such Nonsuit is not peremptory, because 'tis before Appearance. P. 4 Ann. Appeals

Appeals are of  
3 Sorts.

Appeals are of three Sorts, 1. By the Heir Male for the Death of his Ancestor. 2. By the Wife for the Death of her Husband. 3. By the Appellants for wrong done to themselves, as Robbery, &c.

These Appeals are now not so common as Indictments, because the Prosecution is not only more chargeable, but 'tis the most nice Suit in the Law, for the Omission of any Word which is Material will abate the Writ. 1 And. 41.

So by mistaking the Place. Cro. El. 196.

So where an Appeal is brought against one as Accessary to a Murder, where no Principal was named in it. Dyer 133. Where 'tis brought by a Brother and Heir it shall abate, if he is so named after the *alias dictus*, and not in the Substance of the Writ. Dyer 50. b.

Capias must  
be the Day of  
the Return of  
the Writ.

The Process of *Capias* must be awarded the same Day of the Return of the Writ of Appeal, and it will be a Discontinuance if dated but a Day afterwards, and aided by no Statute, nor by the Appearance of the Party himself. 2 Cro. 283. Yelv. 204. 1 Bulstrode 141.

Nonfuit in Ap-  
peal peremp-  
tory.

This varies from all other Proceedings, for a Fault in it can never be amended; and tho' regularly after a Nonfuit you may bring the like Action again, yet a Nonfuit in any Appeal for Felony (but it must be after Appearance in proper Person, Sid. 52.) is peremptory, because 'tis *in favorem vitæ*. Yet the Party may be afterwards indicted. 1 Inst. 139. Cro. El. 460.

5 G. 1. does  
not extend to  
Appeals.

And the Stat. 5 G. 1. c. 13. by which Writs of Error were made amendable, does not extend to any Appeal of Felony or Murder, nor to any Process upon an Indictment or Information, &c.

If there be a nearer Heir to the Person killed, the next Heir Male cannot bring an Appeal in Murder; as, if he that was killed had only a Daughter, his Brother shall not have an Appeal.

What the  
Count in Ap-  
peals contain.  
\* *Circiter pectus*  
not good in an  
Appeal.

The Count in an Appeal must contain the Fact, as to which four Things are necessary, 1. In what \* Part of the Body. 2. Of what Length and Depth. 3. That he died of the Wound. 4. Within the Year and a Day.

The Year, the Day not necessary in an Indictment.

The Hour it may be *circa Horam ante Meridiem*.

The Year of the King. That the Fact may appear to be done within the Year.

The Vill where it was done: And with what Weapon.

The Fact must be laid to be done in a Vill, and not in a Parish, because 'tis expressly requir'd by the Stat. of *Gloucester*, that the Fact shall be alledg'd to be done in a Vill. 11 *Ann.*

An Appeal against an Accessary ought to be brought in the County where the procuring and inciting was, and not where the Principal was attainted. *Dyer* 38. a.

And as the Place, so likewise the Time when to be brought is material; and as to that there is some Difference, for if 'tis an Appeal for Murder, it must be brought within a Year and a Day after the Fact; if for Robbery it may be twenty Years after.

Where one is indicted of Murder, and convicted of Manslaughter, and an Appeal brought, the Court may proceed upon such Conviction, pending the Appeal; and the Appellee may be bailed before he has his Clergy: And the Court may proceed to Judgment upon the Conviction of Manslaughter, tho' there be an Appeal depending. And this was resolv'd in the Case of *Armstrong and Lisle*.

Indicted of Murder, and convicted of Manslaughter.

In former Times there cou'd be no Proceeding on an Indictment for Murder till the Year and a Day was expired, in which Time the Party might bring an Appeal; and 'tis agreed, that if an Offender was indicted, at the same Time, and before the same Judge, and Appeal was freshly prosecuted, the Appeal ought to be preferred; because, if it was for a Robbery, the Appellant might have Restitution, which he cou'd not have upon an Indictment before the Statute 21 *H. 8.* And if it was for a Murder, no Pardon cou'd prevent the Punishment. But by Stat. 3 *H. 7. c. 1.* An Indictment may be tried without staying for the Appeal.

Appeal formerly prefer'd to an Indictment.

If one indicted of Murder is found guilty of Manslaughter, and afterwards being demanded by the Court why Judgment should not pass against him, he prayed his Clergy, which is allowed, and that he reads as a Clerk, and was burnt, &c. This is a good Plea to bar the Appeal. *Armstrong and Lisle*.

Plea in Appeal.

If a Stroke be in one County, and Death in another, the Appeal may be brought in the County where the Man died, by the Stat. 2 & 3 *Ed. 6.* tho' not at Common Law. But a Fact in one County cou'd not be tried in another, and therefore an Appeal of Murder committed in *Montgomery* was tried by a Jury in *Shropshire*; and for this Cause it was held ill. 2 *Inst.* 68. *Jones* 255.

'Tis true, the Stat. 26 *H. 8. c. 6.* allows that a Man may be indicted in one County for a Fact committed in another; but it doth not mention Appeals.

Stat. 26 *H. 8.*

At



Woman can  
appeal for no  
Murder but of  
her Husband.

At Common Law a Woman might have an Appeal for the Death of her Ancestor, but by *Magna Charta* 'tis enacted, That a Woman shall not have any Appeal of Murder but for the Death of her Husband; and therefore *ne unques acouple, &c.* is a good Plea in Bar to an Appeal. 1 *Inst.* 15. Yet if the Person slain had no Heir of his Father's Side, his Uncle of the Mother's Side might have an Appeal; and in such Case he must of Necessity make his Conveyance by a Woman.

If she marries  
Appeal is gone.

She must continue to be *fœmina viri sui*, for if she marry before, or pending the Appeal, 'tis gone; if after Judgment in an Appeal, she cannot have Execution. 3 *Inst.* 241.

At Common  
Law no Resti-  
tution on In-  
dictment.

She might have an Appeal of Robbery, for that is a Wrong done to herself.

At the Common Law this Appeal was the only Way for the Party robbed to have Restitution of the Goods taken from him, for he could not have them restored upon an Attainder, or an Indictment, because that was at the Suit of the King. And this was the Occasion of making the Statute of 21 *H.* 8. to remedy that Defect, and to give the Justices a Power to award Restitution of the Goods taken away, the Robber being found guilty. *Staundf.* 167. 2 *Inst.* 320.

Principals and  
Accessaries  
must be join'd  
in Appeal.

Principals and Accessaries must be joined in an Appeal; and yet if the Principal be pardoned before Judgment, or hath his Clergy, the Accessary cannot be tried, because before Judgment given it doth not judicially appear that there was any Principal; and where there is no Principal, there cannot be an Accessary; but if the Principal be pardoned after Attainder, 'tis otherwise.

A Release of  
Actions real  
and personal  
will not dis-  
charge Appeal.

A Release of all Actions real and Personal will not discharge an Appeal of Felony, because 'tis an Action of a higher Nature; 'tis a Criminal Action, and must be released by the Word Appeal, or by other general Words, *viz.* All Actions Criminal or Mortal, &c.

But a Release of all Personal Actions is a good Bar to an Appeal of Mayhem, because Damages are only to be recovered therein.

Plea is in Appeal.

Upon Not guilty pleaded in an Appeal of Mayhem, the Appellee cannot give in Evidence that he did it in his own Defence, but he ought to plead it specially by way of Justification.

'Tis a good Bar to plead a Recovery in Trespass, &c. and to aver, That the wounding in the Appeal of Mayhem, and the Mayhem in the Trespass were all one. 4 *Rep.* 43.

But

But this Appeal is seldom brought ; the usual Way is an Action of Trespafs for an Assault, Battery and Maiming, &c. and in this Action the Court may increase the Damages upon the View of the Mayhem, and Affidavits of the Expences ; but then the Word *Mayhemavit* must be in the Declaration, or the particular Manner of the Mayhem must be expressed, which is the better Way of declaring ; for otherwise the Court cannot increase the Damages, unless the Judge before whom it was tried will certify the Particulars, but he must be a Judge of the same Court. *Sid.* 108. *Hard.* 408.

Misnomer is a good Plea in an Appeal. *Dyer* 348. 3 *Leon.* 268. *Cro. El.* 223, 224.

In an Appeal of Murder the Jury may find the Defendant guilty of Manslaughter, or not, as they shall see Cause ; but if they find him guilty of Manslaughter, that shall be a good Plea to an Indictment for the same Murder, *viz.* That in the Appeal he was found not guilty of Murder, but guilty of Manslaughter. 4 *Rep.* 45. *Cro. El.* 276, 296.

Guilty of Manslaughter a Bar on Indictment.

In an Appeal of Murder for the Death of her Husband against the Defendant, *nuper de Parochia Sti. Jacobi Westm.* &c. he pleaded in Abatement, that there is a Parish named *St. James's* within the Liberty of *Westminster*, but no Parish named *St. James's Westminster* only, and upon Demurrer this was held a good Plea. 3 & 4 *Ja.* 2.

It has been doubted if the Jury in an Appeal for Murder find the Defendant not guilty of Murder, but guilty of Manslaughter, whether upon such a Verdict, and Clergy allowed, the King can pardon the Burning in the Hand. *Cro. El.* 276, 464. *Dyer* 261. *Cro. El.* 632, 682. *Moor* 571. *Latch* 126. The Pleadings are entered at large in my Lord *Coke's* Entries, *fol.* 57.

If King can pardon burning on the Hand in Appeal.

But my Lord, who has reported this Case, 5 *Rep.* 50. tells us that, upon Conference had with other Judges, Judgment was given, that the Queen might pardon the Burning in an Appeal ; and the Reason he gives is, because 'tis no Part of the Judgment or Punishment, but only a Mark to signify that he shall not have his Clergy again ; and this was also the Opinion of my Lord *Hobart* in his Argument between *Searl* and *Williams*, *Hob.* 294. So that this Point is now settled.

The Teste of the *Capias* must bear Date the same Day Process in Appeal with the Return of the Writ of Appeal ; and so every new Process must be dated on that very Day the other was determined ; for the Intermision of a Day will make a

Process in Appeal.

Several Defendants outlaw'd, all must appear.

Discontinuance, because by Law the Appellant must prosecute the Defendant *recenter & instanter*, so that the Appeal must be pursued *de die in diem*.

If there are several Defendants, and all outlaw'd, and then all of them join in a Writ of Error, and one alone appears, the Outlawry shall not be reversed, altho there is a plain and manifest Error in the Proceedings, without the Appearance of all, nor then neither, until a *Scire Facias* issued to the Lords mediate and immediate.

The Defendants cannot imparl, but the Court may be adjourn'd by a *Dies datus* until such a Day, and when they appear, and Issue is joined, the Appellant must pray a *Venire facias* immediately.

How if the Appellant don't proceed what Evidence not allowed in Appeals.

If the Appeal is removed by *Certiorari*, and the Plaintiff will not proceed, the Defendant may have a *Scire facias*, and upon *Nibils* returned, or a *Scire feci*, and Default, the Defendant is discharged.

Evidence given for or against the Defendant in an Indictment, is no Evidence in an Appeal; and therefore the Court would not suffer the Witnesses for the Apellee to depose what was given in Evidence upon an Indictment by a Witness then dead; but this was contrary to the Opinion of Judge *Twysden*.

## Apples and Pears.

**A**PPLS and Pears, if sold by Water Measure, it shall be round, and 18 Inches and an Half Diameter within the Hoop, and 8 Inches deep, and no more; and so in Proportion for a greater or a lesser Measure, and heaped.

He who buys or sells by other Measure forfeits for every Offence 10*s.* one Half to the Informer, and the other to the Poor of the Parish where the Offence is committed.

Conviction must be by the Oath of one Witness before one Justice, Mayor, &c. and the Penalty is to be levied by a Warrant. 1 *Ann. c. 15.*

The



## The Form of the Warrant.

To the Constable and Headborough of the Hundred of, &c.

**W** Hereas L. M. hath been duly convicted before me for selling Apples at L. on the 22d Day of February last past, in a Measure not round, nor 18 Inches and an Half Diameter within the Hoop, or 8 Inches deep; neither were the said Apples heaped in the Measure out of which they were sold, so that he hath forfeited 10s. These are therefore to require you forthwith to levy the said 10s. on the Goods and Chattels of the said L. M. by Distress and Sale thereof, rendring to him the Overplus; and that you pay a Moiety thereof to D. D. who first informed me of the said Sale, and the other Moiety to the Churchwardens and Overseers of the Poor of the said Parish of L. where the said Offence was committed, for the Use of the Poor thereof: And hereof fail not. Given under my Hand and Seal, &c.

1 Ann. c. 15.

## Apprentices. Vide Servants.

**E** Very Housholder using half a Plow-Land in Tillage, may take an Apprentice above 10 and under 18, to be bound by Indenture till 21 or 24. Every Housholder in any Town corporate using any Art, Mystery or manual Occupation, may take an Apprentice for seven Years; he must be a Freeman's Son (not occupying Husbandry nor a Labourer) in the same or some other corporate Town.

Apprentice comes from Apprendre, (i.e.) addiscere. 5 Eliz. c. 4.

Merchants may not take an Apprentice except their own Sons, or the Parents of the Apprentice be worth 40l. a Year clear, of one Estate of Inheritance, or Freehold at the least, which must be certified under the Hands of three Justices of the County where the Estate lies.

**N. B.** These Certificates were not much in Use, even when Dalton wrote; but now they are wholly disused, neither is there Regard had of the Ability of the Parents whose Children are placed to any Trade whatever.

Such Artificers, as express'd in the Act, may take Apprentices whose Parents have no Land.

## Apprentices.

*N. B.* Woollen Weavers not taking Apprentices unless Father or Mother have 3 *l.* a Year, repealed by 5 & 6 *W.* 3. c. 9.

Upon Housholder's Complaint to a Justice, he may cause any Person he thinks fit to be bound Apprentice, &c. Persons fit to make Apprentices, refusing to serve on Demand, may be committed by one Justice 'till willing to serve. A Proviso for the Liberties of Worsted Weavers in *Norwich* and *Norfolk*, granted them by any former Act of Parliament.

5 *Eliz.* c. 4.  
Mariners  
might take and  
keep one or  
more Apprenti-  
ces bound and  
inrolled for  
ten Years.

1 *Lutw.* 474.

Vide Stat.  
2 *Ann.* &c.

An Informati-  
on will not lie  
on Stat. 5 *Eliz.*  
&c.

Hetley 164.

If an Appren-  
tice in Hus-  
bandry, &c.  
Nelson 38.

Justices may  
either punish  
or discharge,  
&c.

1 *Mod.* 286.

2 *Vent.* 174.

1 *Saund.* 314.

Owners of Ships or Vessels, or any Housholder using the Sea by Fishing or otherwise, &c. might take and keep one or more Apprentices to be bound for ten Years or under, by Writing indented and inrolled in the Town where such Apprentice dwells, if it is a Town Corporate; and if not, then in the next Town Corporate. Stat. 5 *Eliz.* c. 4.

Since the making which Act, a Mariner took an Apprentice by Indenture, and there was a Bond for Performance of Covenants, the Apprentice ran away, the Bond was put in Suit, and the Obligee pleaded this Statute, and that the Indenture was not inrolled: But the Case was not argued, and so no Judgment given.

But now by a late Act *Anno 2 Ann.* Provision was made for putting poor Boys Apprentices to Seamen. Which see in Title *Seamen*.

An Information was brought on Statute 5 *Eliz.* for detaining an Apprentice in Husbandry, being bound 'till Twenty-one, and for departing without a Testimonial: Two Judges were of Opinion that it would not lie, because the Statute doth not extend to provide against the Departure of an Apprentice by Indenture, but an hired Servant.

If an Apprentice in Husbandry doth not perform his Duty, the Master may complain to one Justice, whose Business it is to reconcile them if he can; but if he cannot, then the Justice may send him to the House of Correction, or more regularly and safely may bind him over to the Sessions, and from thence he may be sent to the House of Correction.

Justices have not an express Power to discharge an Apprentice, if the Fault be in him, as they have if the Fault be in the Master: But they cannot punish a bad Master, though they may discharge the Apprentice, and they may either punish or discharge a bad Apprentice, as they shall think fit.

Apprentice assaulting his Master, may be sent to the House of Correction; and a Master may justify striking an Apprentice. *Apprentice assaulting, &c. Jac. Just. 27.*

The Sessions in this Case have only an additional Power, viz. to discharge or punish, if one Justice cannot compose the Difference; and therefore Application ought first to be made to him. *Sessions, &c.*

If the Fault be found in the Master, then the Justice may bind him over to the Sessions, and four Justices there may discharge the Apprentice, which Discharge is to be inrolled by the Clerk of the Peace. *If Fault in the Master, &c.*

The Discharge must be under their several Hands and Seals; and therefore where the four Justices subscribed their Names, and there was but one Seal, the Order was quash'd. *1 Ann. B. R. Discharge, &c.*

The Master and Apprentice may agree to leave each other; and in such Case the Master may give Leave under his Hand to depart; and then one Justice out of Sessions may discharge him, by allowing the Cause of putting him away. *If Master and Apprentice agree, &c.*

But because he cannot be made an Apprentice without Writing, therefore he cannot be discharged but by a Writing under the Hand of the Master. *Discharge must be in Writing.*

Not allowing Meat, Drink, or Wages agreed on; this is a good Cause to be allowed by the Justice, and so is Beating him unreasonably. *Not allowing Meat, &c. F. N. B. 168.*

Any departing from his Service whatsoever, refusing to do any reasonable Service, is a Departure in Law; but as to that Part of the Act, which says an Apprentice departing without a Testimonial shall be whipped as a Vagabond, it must be an Apprentice in Husbandry, and one of full Age; for otherwise an Infant, who is the Son of a Gentleman, may happen to be punished as a Rogue. *Any departing from his Service, &c. Winch 25.*

*N. B.* That if the Master shall put his Apprentice into Apparel, it is a Gift in Law, and he cannot after take it away, though he should part with his Apprentice, &c. *Dalt. 153.*

If he steal any Thing from his Master above the Value of 12d. not delivered to him to keep, on due Proof thereof made before one Justice, he may commit him to Gaol, together with those who perswaded him to commit the Felony, and those who received the Goods, knowing them to be stoln; but if under that Value, then they may be all sent to the House of Correction by *If he steal above 12d. &c.*



one Justice ; but according to *Dalton* rather by the Sessions. See Stat. 12 Ann. c. 7.

No Person, &c. Apprentices ought to serve seven Years ; and if any  
5 Eliz. c. Person who hath not served that Time in any Trade, shall use the same, or employ any therein who hath not served out that Time, he is liable to a Penalty of 40 s. per Mouth. 5 Eliz. c. 4. This Law was made to encourage Skilfulness in Workmen, and that the Youth might be regularly brought up in some lawful Trade. *Noy's Rep.* 154.

Except Hemp-Dressers, &c. But Hemp-Dressers, Makers of Hemp-Cloth, Nets and Tapestry, are excused by Statute 15 Car. 2. c. 15.

Now in what Court this Penalty is to be recovered, hath been a Question formerly ; but now by Statute 21 Jac. 1. c. 4.

Suits for all Offences, &c. All Offences to be committed against any Penal Law, for which any common Informer may lawfully bring any popular Action, Bill, Suit or Information, shall be commenced by Way of Action, Complaint, Bill, Information or Indictment before Justices of Assize, *Nisi prius*, Oyer and Terminer, or before Justices of Peace of every County, &c. where such Offences shall be committed, at the Choice of the Party who shall commence such Suit, and not elsewhere (that is when the Party might bring the Action either above, or in an inferior Court) and that all Informations, &c. to be brought by the Attorney General or Informer, in any Courts of *Westminster*, for such Offences, shall be void. This Clause was added by *Serjeant Rolls*.

This Stat. restrains even Actions of Debt, &c.

This Statute hath been formerly held to restrain Informations above, but not an Action of Debt by a common Informer : Put in *Hicks's Case*, 10 W. 3. it was resolved and agreed by all the Judges, that this Statute restrains the Jurisdiction of B. R. in Actions of Debt by common Informers, and that they cannot bring Debt there, unless the Cause of Action arise in the County of *Middlesex*, where B. R. sits ; but when a Remedy is given by Action, by any subsequent Penal Law, such Action is not restrained to the proper County, though Ch. Just. *Holt* was of Opinion, that where any subsequent Statute gives a popular Action, it must be laid in the proper County within the Equity of the Statute 21 Jac. 1.

All Trades except those of Bodily Labour, &c. are within this Act. Any Trade in which there is an Art and Mystery is within the Intent and Meaning of this Statute, so as it doth not purely consist in Labour ; and so as the Party gets his Livelihood thereby ; but then such Trade must be

be exercised in a Corporation or Market-Town not corporate; for it hath been held that the Statute extends to such, and not to Trades used in Villages; and it hath been adjudged, that a Person serving as an Apprentice for seven Years, though not bound, is out of the Statute of 5 Eliz.

Officers and Soldiers who have served the Crown, and not deserted, and who have formerly used any Trade, or were Apprentices, or any other Soldier who is apt and able to practice any Trade, may set up the same, as if they had served out their full Time; and all others may set up Trades in any Place in the Counties where they were born; and if prosecuted for the same, then upon the General Issue pleaded, they shall be found Not guilty, and have treble Costs; but the Proof of their Service must be by a Certificate under the Hand and Seal of some Field-Officer, or two Commission-Officers of the Regiment where he served, or some General Officer of the Army; this Certificate to be proved by one Witness; or in Default of such Certificate by the Oath of two credible Witnesses.

Any Person may use privately any Trade for the Use of the Family whereof he is a Member. 8 Co. 129, 13. a. 11 Co. 54. But such an one cannot retain an Apprentice.

The Sessions have nothing to do concerning an Apprentice, before it comes before a private Justice. 1 Mod. 287.

Every one bound an Apprentice according to the Statute 5 Eliz. tho' under Age, yet is compellable to serve his Time out, as if he were of Age when he was bound; but that is to be understood of a Compulsion by the Means prescribed by that Statute, for the Covenant is not good, so as to enable the Master to bring an Action upon it, as was resolved 5 Car. 1. Cro. p. 129. Gilbert v. Fletcher.

Can't bring an Action, &c. Dalt. 126.

So necessary are Trades to a Kingdom, that if a Man be bound not to use a Trade, that he hath been brought up in generally, that Bond is void; but a Man may bind himself, not to use a Trade in a particular Town or Parish.

Bond not to use his Trade, &c. Dalt. 124.

If any Servant or Apprentice shall unlawfully depart or fly into another Shire, the Justice, &c. may grant Writs of *Capias* to the Sheriff or other Officer, whither the Servant is gone, to take his Body, returnable before them, &c. who shall imprison the Offender till he find Surety to serve his Master again. 5 Eliz. c. 4.

If any Servant, &c. Dalt. 129.

## Apprentices.

Master cannot  
send, &c.

3 Bulst. 164.

Action, &c.

1 Brownl. 67.

A Man may

turn over, &c.

Goldsb. 161.

Action lies for  
inticing an Ap-  
prentice.

Whether the  
Sessions can  
discharge  
an Appren-  
tice not put out  
by Justices.

1 Vent. 147.

Bond given for  
Apprentice to  
give a just Ac-  
count, not

within 5 Eliz.

3 Bulstrode,  
179.

Upholster,

&c. within 5

Eliz. 1 Levinz

243. 1 Keble

366, 378, 390,

408, 436.

Apprentices not

&c. 5 Eliz. of

departing with

out a Testimo-

nial, Het. 164,

165.

Barber and

Salesman with-

in 5 Eliz.

Churchwar-

dens mention-

ed in the Order

for placing a

poor Boy Ap-

prentice to Hus-

bandry.

Turky Mer-

chant employ-

ing, &c. in

his House, guil-

A Master cannot send an Apprentice beyond the Seas  
(except he go with him) but may send him to any Place of  
England. 3 Bulst. 164. *Brown's Case.*

Action of Account is not maintainable against an Ap-  
prentice. *Brownl.* 67.

By Custom of London, a Man may turn over his  
Apprentice to any other within the City. *Goldsbo-*  
*rough* 161.

Action lies by Master for inticing an Apprentice to  
depart from his Service; so if inticed to take Money or  
play. *March* 3. *Noy* 105.

If the Master dies before the Apprenticeship is expir'd,  
the Apprentice shall go to the Executor or Administra-  
tor if he hath Assets, and if he hath no Assets, then  
he must retire to the Parish where he was last settled.  
*Shorr.* Rep. 405.

'Tis doubted whether the Quarter-Sessions can discharge  
an Indenture of Apprenticeship where the Apprentice was  
not imposed upon the Master by the Justices and compel-  
led to Serve.

A Bond given by an Apprentice to deliver up a just and  
true Account, is not within the Clause of Stat. 5 *Eliz.*  
but agreed by all the Court to be a good Bond, being  
for a Collateral Matter. *Pasc.* 14. *Jac.* 1. *Bulst.* 3.  
*Pl.* 179. *Bennet v. Belfield.*

An Upholster is a Trade within 5 *Eliz.* *Levinz.*  
*Rep.* 1 Part 243. *Keb.* Part 1. p. 366, 378, 390,  
408, 436.

Apprentices are not within 5 *Eliz.* that if any Person  
retain'd depart from his Master, &c. but only hired Ser-  
vants are within that Clause, and are to have a Testi-  
monial. *Hil.* 6. *Car.* 1. *C. B.* *Het.* 164, 165.  
*Brown's Case.*

A Barber and a Salesman are Trades within 5 *Eliz.*  
*Trin.* 32. *Car.* 2. *Raymond*, p. 385. *The King* versus  
*Bishop.*

An Order made at the Quarter-Sessions at Gloucester,  
was remov'd into B. R. confirming another made by  
the Justices there, for placing a poor Boy to be an  
Apprentice in Husbandry, was quash'd, because the  
Church-wardens were not mentioned in the Order.  
*Mich.* 1 *W. & M.* 3. 3 *Mod.* 269, 270, 271. *The King*  
versus *Fairfax.*

Y. was a Merchant who exported Cloth to Turkey, and  
he employ'd Men in his House in the Trade of a  
Clothworker, who had been educated in the said My-  
stery for seven Years, and provided Materials for them,  
and paid them weekly Wages; but he himself was  
not



not an Apprentice to the Trade. Ch. Just. *Holt*, and two other Judges against the Opinion of *Dolben*, were of Opinion, That *Y.* was guilty of exercising the Trade of a Clothworker, against the Stat. 5 *Eliz.* c. 4. and therefore they gave Judgment against *Y.* *Mich.* 2. *W. & M. B. R. Mod. Rep.* 3d Part 313. *Hobbs qui tam, &c.* against *Young*.

One *Crane* was put Apprentice by the Justices of Peace to one *Browning*, who dies; Administration is committed to one *Pott*, the Apprentice falls sick, and becomes chargeable to the Parish. The Justices make an Order for sending him to *Pott* to maintain and provide for him; he appeals to the Quarter-Sessions, and there the Order is confirm'd; the whole is removed into *B. R.* where all the Justices Orders were quash'd. *Trin.* 4. *W. & M. B. R. Shower's Rep.* 405. *K. & Q.* against *Pott* and the Inhabitants of *Bedingfield* in *Suffolk*.

The Assignment of an Apprentice, even tho' with his Consent, will not make him an Apprentice to the Assignee, within 5 *Eliz.* c. 4. *Trin.* 27 *Car.* 2. *B. R.* 3 *Keble Rep.* 519. *Pl.* 81. *Rex versus Chanrel*; but in *London* by the Custom 'tis otherwise.

Justices of Peace have Conusance of Apprentices bound by Indentures, or otherwise, as well by private Persons as by the Overseers of the Poor. *Pasch.* 13 *Car.* 2. 1 *Keb.* p. 6.

A Brewer is within the Stat. 5 *Eliz.* c. 4. and so adjudged. *Trin.* 5 *Jac.* 1. *Cr. Ja.* 178. *Shoyle versus Taylor*. This Judgment affirmed upon a Writ of Error. *Mich.* 6. *Jac.* 1. *Co.* 8. f. 129. b. and *Rep.* 13. p. 11.

And so is a Woollen Draper notwithstanding he be a Freeman of *London*. *Mich.* 21 *Car.* 2. *Sana's Rep.* 1. p. 311. *Rex versus Kilderby. Siderf.* 1. p. 427.

The Justices of Peace have the same Power of discharging Apprentices upon the Complaint of the Master against the Apprentice, as upon Complaint of the Apprentice against the Master. *Mich.* 21 *Car.* 2. *Saunders's*, p. 315. *Hawkefworth versus Hillary. Trin.* 29 *Car.* 2. *B. C.* 1 *Mod.* p. 286. *Watkins versus Edwards*.

Indictment on Stat. 5 *Eliz.* for exercising the Trade of a Merchant Taylor, and quash'd, because not a Trade used before the Statute, and much less a Trade within the Statute.

A Tradesman's Widow can't use a Trade unless apprenticed to it. *Black.* 17.

By Stat. 8. *Eliz.* c. 2. a Hat-maker is not to have above two Apprentices at one Time, upon Pain of being committed for a Month.

ty of exercising the Trade of a Clothworker, within 5 *Eliz.* c. 4. 3 *Mod. Rep.* p. 313. *Hobbs qui tam, v. Young. Master dies, Apprentice sick and becomes chargeable to the Parish, Justices send him to the Administrators, but the Order was quash'd in B. R. Shower's Rep.* 405. *Pott* and the Inhabitants of *Bedingfield*. Assignment of Apprentice, &c. 5 *Eliz.* 3 *Keb.* 519.

Justices have Conusance of Apprentices, &c. 1 *Keb.* p. 6.

A Brewer, &c. within 5 *Eliz.* *Cro. Ja.* p. 178. *Co.* 8. 129. b. 13 *Co.* p. 11. And so is a Woollen Draper, &c. *Sand. Rep.* 311. *Sid.* 1. p. 427.

Justices have same Power of discharging, &c.

A Merchant-Taylor no Trade within 5 *Eliz.*

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Indictment for using the Trade of a Taylor, not having serv'd as an Apprentice seven Years, was quash'd, because only said not having serv'd as an Apprentice *infra Regnum Angliæ aut Walliam*; for it may be he did so beyond Sea; and if it were any where it suffices. 1 Salk. 67. in *Maddox's Case*. Pasch. 5. Ann. B. R. it was held upon Indictment, on the Stat. 5 Eliz. that following a Trade for seven Years is sufficient without any Binding. 2 Salk. 613. Pasch. 11 W. 3. B. R. *Rex versus Fox*.

Poor Apprentices.  
43 Eliz. c. 2.

1. Who shall be bound, and by whom.
2. Who shall take them, and at what Age.
3. How the Money to put them out shall be raised and disposed.

1. Who shall be bound.

Poor Children of such Parents as are not able to maintain them, may be put out Apprentices, and the Parents refusing to suffer them may be bound over to the Sessions.

Dalt. 107.  
Must be bound by Overseers, &c. with Assent of two Justices, &c.

But this must be by the Assent of two Justices; and the Overseers of the Poor, or the greater Part of them, are to place out such Children; and the Law hath made them Judges of the Disability of the Parents, and one Justice may compel any Person meet to be bound.

Dalt. 107.  
'Tis Discretionary to give Money with them, but not necessary.  
Dalt. 106.

There is no Necessity of giving Money with them, 'tis Discretionary in the Church-wardens whether they will give any or not.

2. Who shall take them.

Every Man of good Estate or Ability may be compelled to take Apprentices, or every Man who by his Profession or Manner of Living must keep such Servants; for the Power given to Church-Wardens to place them out, doth necessarily imply, that such who are fit to be Masters must take them.

By

By Statute 8 & 9 W. 3. if a Church-warden maketh Oath before two Justices that a Master refuses to take a poor Apprentice, he shall forfeit 10*l.* to be levied by Warrant of the said Justices, and Distress thereupon for the Use of the Poor ; but the Party may appeal to the next Sessions, whose Order is final ; and Clergymen are not exempted from taking Apprentices.

The Justices may discharge an Apprentice, and order a Restitution of the Money, and if the Master is not bound to appear at the Sessions, yet they may proceed to make an Order against him.

The Church-wardens cannot place them to Masters in another Parish, but the Justices in Sessions may ; and if there are not Masters fit to receive them in any Hundred, then they may be put out in the County at large ; but this must be by the Sessions.

Lessee for Years of a Farm taketh an Apprentice, and the Term expires before the Apprenticeship ended, he must go with the Farm, if his Master will permit him ; but where a Man taketh an Apprentice by reason of his Ability, and the Master dieth before the End of the Apprenticeship, he shall go to the Executor or Administrator, if he hath Assets, and if none, then he must return to the Parish where last settled. *Shower's Rep.* 405.

Indictment, for that a poor Boy being put out Apprentice pursuant to the Statute, the Master refused to provide for him ; and this was held good since the Statute 8 & 9 W. 3. vid. 3 *Ann. B. R.*

does lie, since Stat. 8.

3. How the Money shall be raised.

By the Overseers weekly, or otherwise by Taxing every Inhabitant, Parson, Vicar, and Occupier of Lands, Houses, Tithes, &c. as they shall think fit.

Money may be raised weekly or otherwise.

By Stat. 7 Ja. 1. c. 3. Money given to put out poor Children Apprentices, if in Towns Corporate, shall be employ'd by the Corporation ; if in other Places, then by the Parson, together with the Constable, Church-wardens, and Overseers, &c. or the greater Part of them ; who if they refuse forfeit five Marks each of them, to the Use of the Poor ; and if any Person act contrary to his Trust, a Commission out of Chancery may be awarded to certain Persons to enquire into it.

Money to be employed by Corporation, in other places by Parson with Constable, &c.

If any refuse to take them Apprentices, &c. forfeit 10*l.* by 9 & 10 W. 3.

Justices may Discharge, &c. and order restitution of Money &c. Nelson, 42. Church-wardens can't place them, &c. but Justices may. Ibidem.

Apprentice goeth to the Administrator, if Assets, if not, to the Parish, where last settled. Shower's Rep. 405.

Indictment against Master refusing to provide for a poor Apprentice and 9 W. 3.



**Master must give Security to repay the Money at seven Years End.**

The Master must give Security to repay what Money he takes with an Apprentice at the end of seven Years next ensuing the Date of the Bond, or within one Year after the Death of his Apprentice, if he die within that Time.

If no fit Persons to be Apprentices in the Place where the Money is given, it may be employed in the Parishes adjoining.

**Trustees must Account in Easter-Week. At what Age poor Apprentices may be bound. 1 Ja. 1. c. 3.**

The Trustees must Account in *Easter-Week* to the two next Justices.

They must be above seven, and under fifteen, for if above that Age they cannot be compelled, but they must Work or go to Service, or be sent to the House of Correction, or be bound over to the Sessions, or to their good Behaviour.

**At what Age Apprentices to Trades upon Stat. 5 Eliz. c. 4. may be bound.**

The Man Child shall be bound 'till he come to the Age of twenty-four Years.

Above the Age of ten Years any Person may be bound by his own Agreement by Indenture, &c. and if above twelve he may be compelled by a Justice.

**Persons who have been Beggars two years may be bound Apprentices and sent to Plantations.**

*N. B.* By Statute 12 Ann. S. 2. c. 23. Such as have no legal Settlement, or Vagrants, or common Beggars, for two Years past (tho' formerly settled) or dangerous and incorrigible Rogues, within that Act, may be forced to serve seven Years Apprenticeship to any that will take them, and may be afterwards sent to the Plantations, provided the Master give a Recognizance of 40*l.* not to sell them to any Alien; and any Justice may take such Recognizance, and must transmit it to the next Quarter-Sessions, to be there filed.

**Indictment will not lie for enticing away a Man's Apprentice, &c.**

It was a Question whether an Indictment would lie for enticing a Servant, or an Apprentice out of his Master's Service, and to carry off his Goods, for 'tis but a private Injury, and not in its Nature publick, and therefore an Action on the Case lies for enticing; but Trespas will lie for taking him out of his Actual Service; and the Court upon a Motion in Arrest of Judgment was of that Opinion, that an Indictment would not lie.

**Poor Boys ten Years old may be put Apprentice to the Sea-Service till 21 Years of Age, &c.**

Poor Boys, ten Years old, whose Parents are chargeable to the Parish, may with the Consent of two Justices, &c. be put Apprentices to the Sea-Service till 21 Years of Age, and the Overseers, &c. shall pay the Master, when the Boy is bound, 2*l.* 10*s.* for cloathing and bedding, and be allowed it in their Accounts. A Master of a Ship from 30 to 50 Tons, refusing one such Apprentice, shall forfeit 10*l.* **Poor Boys bound**

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to other Employments, may be turned over to a Master of a Ship by Statute 2 *Ann. c. 6.*

*Ann. 2 & 3. c. 6.*

Forfeitures to be levied by Distress and Sale by Warrant from two Justices, who may hear and determine all Complaints from Parish Boys bound Apprentices to Sea.

Using of a Trade for Profit or Gain is an Exercising within the Statute 5 *Eliz. c. 4.* But a Man may keep a Shop in a Country Village for the Convenience of the Inhabitants, and not be within the Statute.

Keeping a Shop in a Village, not within 5 *Eliz. 1. Vent. Rep p. 51.*

Persons coming into any Parish by Certificate, and taking Apprentices by Indentures, such Apprenticeship shall not make a legal Settlement in such Parish (unless such Master had gained a legal Settlement in the said Parish after Certificate given) but such Apprentice shall have his Settlement in such Parish, &c. as if he had not been bound Apprentice.

Apprentices to Persons coming into a Parish by Certificate gain no Settlement. Le Strange's Justice 10.

Collectors of the Customs not keeping an exact Register of the Number and Burthen of all Ships, &c. with Masters and Apprentices Names in each Ship, and from what Parishes and Places sent; or of transmitting true Copies thereof to the Quarter-Sessions, as often as they shall be required, forfeit 5 *l. 2 Ann. c. 6.*

12 *Ann. c. 18.* Collectors not keeping a Register of Parish Boys, &c. by 2 *Ann. c. 6.* forfeit 5 *l.*

It shall be adjudged a good Settlement if an unmarried Person, having no Child or Children, be bound Apprenticed for above a Year, tho' no Notice, &c. unless in Case of a Certificate as above.

Unmarried Person, &c.

No Apprentices bound out by two Justices of Peace, &c. and Church-wardens, &c. of the Parish, shall be impressed or lifted into her Majesty's Service at Sea till he arrive to the Age of 18 Years. 2 & 3 *Ann. c. 6.*

No Apprentices bound out by Parish shall be press'd &c. 2 and 3 *Ann. c. 6.*

No Masters of Trading Ships shall be obliged to take Parish Children Apprentice as directed by Statute 2 & 3 *Ann. c. 6. (vide supra)* under the Age of thirteen Years, or who shall not appear fitly qualified for that Service as to Health and Strength; and Widows and Executors of such Masters may assign over such Apprentices to other Masters who have not their Complement requir'd by the said Act.

No Masters of Ships shall be obliged to take Boys Apprentices under 13. 4 and 5 *Ann. c. 19.*

No Person of the Age of eighteen Years shall have any Exemption or Protection from his Majesty's Sea-Service, who shall have been in any Sea-Service before the Time they bound themselves Apprentices, the aforesaid Statute or any other Law to the contrary notwithstanding.

No Person of 18 shall have Exemption from being press'd, &c. 4 and 5 *Ann. c. 19.*

An

## An Indenture to place a poor Boy out Apprentice.

43 Eliz. c. 2.

**T**HIS Indenture made, &c. Witnesseth, That A. B. C. D. Church-wardens of the Parish of, &c. in the said County, of, &c. and E. F. &c. Overseers of the Poor of the said Parish, by and with the Consent of two of his Majesty's Justices of the Peace of the said County, whose Names are hereunto subscribed, have put and placed, and by these Presents do put and place E. L. a poor Child of the said Parish, Apprentice to N. B. of, &c. with him to dwell and serve from the Day of the Date of these Presents, until the said Apprentice shall accomplish his full Age of, &c. according to the Statute in that Case made and provided; during all which Term the said Apprentice his said Master faithfully shall serve in all lawful Busineses, according to his Power, Wit and Ability, and honestly, orderly, and obediently in all Things demean and behave himself towards his said Master, and all his, during the said Term. And the said N. B. for himself, his Executors and Administrators, doth Covenant and Grant, to and with the said Church-wardens and Overseers and every of them, their and every of their Executors and Administrators, and their and every of their Successors for the Time being, by these Presents, That he the said N. B. the said Apprentice in the Trade of, &c. which he now useth, shall and will Teach and Instruct; and, during all the Term aforesaid, find provide and allow unto the said Apprentice meet, competent and sufficient Meat, Drink and Apparel, Lodging, Washing and all other Things necessary and fit for an Apprentice, and also shall and will so provide for the said Apprentice, that he be not any ways a Charge to the said Parish or Parishioners of the same; but of and from all Charge shall save the said Parish harmless and indemnified during the said Term; and at the End of the said Term shall and will make, provide, allow and deliver unto the said Apprentice double Apparel of all Sorts, good and new (that is to say) one good new Suit for the Holidays, and another for the Working Days. In Witness, &c.

We W. B. and E. S. Esqs; two of his Majesty's Justices of the Peace for the County aforesaid, do hereby declare our Consent to the putting forth of the abovesaid E. L. Apprentice to the said N. B. according to the Intent and Meaning of the Indenture above written.



## A Warrant against an idle and disorderly Apprentice.

**W** Hereas Complaint hath been made unto me by A. B. of, &c. Blacksmith, That C. D. his Apprentice, is not only a negligent, but stubborn and disorderly Servant, and very much Misbehaves himself towards the said A. B. These are therefore to command you to bring both the said A. B. and C. D. before me or some other Justice of the Peace for the said County to be examined in the Premisses, and that such Order may be made between them as to Justice appertains. Given, &c.

5 Eliz. c. 4.  
He may be sent to the House of Correction.

## A Warrant against an Apprentice for departing from his Master.

5 Eliz. c. 4.  
The Justice may grant this Warrant upon Complaint of the Master, and he may reconcile the Matter if he can; but I do not see how he can punish an Apprentice by Indenture; the Sessions may.

Staff. ff. **W** Hereas Complaint hath been made unto me by W. B. of L. &c. That W. C. his Apprentice hath lately departed from his Master contrary to Law: These are therefore in his Majesty's Name to command you, That you apprehend the said W. C. as soon as he can be found within your several Limits, or in either of them, and to bring him before me, or some other Justice of Peace for this County, to answer the Premisses. Given under my Hand and Seal, &c.

An Information will not lie in this Case; but an Action on the Case against him who receives an Apprentice by Indenture, and an Action of Covenant against the Apprentice himself.

## A Warrant against a Master for abusing his Apprentice.

Staff. ff. **W** Hereas Complaint hath been made unto me by R. J. Apprentice to R. N. of the Parish of, &c. Weaver, That the said R. N. doth not allow unto his said Apprentice sufficient Meat, Drink, and Apparel, and hath often immoderately corrected him without any just Cause, &c. These are therefore (as in the former Warrant.)

F

This

Or Mayor, or  
Head Officer of  
a Corporation.

This Warrant must be made by the Justice where the Master dwelleth; and if the Justice cannot reconcile them, he may bind the Master over to next Sessions, whereof four Justices, *Quorum unus*, may discharge the Apprentice under their Hands and Seals.

*Note*; The Practice now is for one Justice to bind over the Master, at the Complaint of the Apprentice, to the next Sessions, and then four Justices to discharge under their Hands and Seals; and upon Complaint of the Master against the Apprentice, to send the Apprentice to the House of Correction, if he will not agree to appear at the Sessions; and at the Sessions, such Order is to be made under the Hands and Seals of four Justices, as is just.

Four Justices at a Private Sessions had discharged an Apprentice, and after at a General Sessions, the Justices finding their Mistake set that Order aside; and now they come into the King's Bench, and move to have the Order of the General Sessions set aside, for that the first Order was according to Law; but the Court denied it, and said, that an Apprentice could not be discharged but by General Sessions according to 5 *Eliz. Skinner* 98. *Anonymus*.

If the Indenture of an Apprentice in *London*, by the Default of the Master, be not inrolled within a Year, the Apprentice may sue out his Indenture, and shall be discharged; but if it be the Default of the Apprentice, as if he will not come before the Chamberlain of *London*, to have it done there, he shall not be discharged. 1 *Roll. Rep.* 305. *Palm.* 361.

### The Discharge.

5 *Eliz. c. 4.*

Staff. *J.* **W**E H. P. T. N. J. S. and R. B. four of his Majesty's Justices of the Peace (one whereof is of the Quorum) for the County aforesaid, having heard and examined the Matter in Difference between R. J. an Apprentice to R. N. of, &c. and it appearing to us that the said R. N. hath not allowed his said Apprentice sufficient Meat, &c. and hath several Times beaten him very immoderately, without any just Occasion: We do therefore for the Cause aforesaid discharge the said R. J. from his said Apprenticeship; and do hereby under our respective Hands and Seals, pronounce and declare, That the said R. J. is discharged from being any longer an Apprentice to his said Master. Witness our Hands and Seals, &c.

This

This Discharge must be inrolled by the Clerk of the Peace or Town-Clerk, which shall be good against the Master, his Executors and Administrators.

## A Warrant against a Master to levy the Penalty of 10*l.* for refusing to receive an Apprentice.

Staff. *ff.* **W** Hereas R. J. a poor Male Child, was by the Church-wardens and Overseers of the Poor of the Parish of, &c. by and with the Assent of R. B. and W. N. two of his Majesty's Justices of the Peace for the said County, lately placed and bound by Indenture as an Apprentice to T. P. of, &c. to dwell with him from the Date of the said Indenture, until the said R. J. should attain his Age of Twenty-four Years, pursuant to the Statute in that Case made and provided: And whereas J. O. one of the Church-wardens of the Parish of, &c. hath made Oath before us, That the said T. P. doth refuse to receive the said R. J. and provide for him as by Law he ought to do; and doth also refuse to Seal a Counterpart of the said Indenture: These are therefore in his Majesty's Name to command you, &c. to levy the Sum of 10*l.* by Distress and Sale of the Goods of the said T. P. for the Use of the Poor of the (a) Parish of, &c. And hereof fail not. Given under our Hands and Seals, &c.

8 & 9 W. c. 30.  
Two Justices  
recite the In-  
denture.

(a) Where the  
Offence was  
committed.

## Indictment for using a Trade, not being Apprentice to it Seven Years.

Staff. *ff.* **T** HE Jurors, &c. do present, That F. C. late of S. in the said County of S. Yeoman, on the Eighteenth Day of August, in the Seventh Year of the Reign of our said Sovereign Lord the King, at S. aforesaid in the said County was and continually afterwards till the Day of the Caption of this Inquisition, (that is to say) on the Tenth Day of October, in the Eighth Year of the Reign of our said Sovereign Lord the King (being for the Space of three whole Months) at S. aforesaid in the County aforesaid, unlawfully for his own proper gain used, exercised and carried on the Trade or Manual Occupation of a Baker, being an Art, Mystery, or Manual Occupation within this Kingdom of England, on the Twelfth Day of January, in the Fifth Year of the Reign of our late Sovereign



(a) This is now needless at this Distance of Time from the making of the said Statute.

reign Lady Elizabeth, Queen of England, &c. used and approved of, (a) "Whereas in Fact the said T. C. on the same Twelfth Day of January, in the said Fifth Year of the Reign of our said Sovereign Lady Elizabeth, late Queen of England, did not lawfully use and exercise the said Art, Mystery or Manual Occupation of a Baker, nor any other Art, Mystery or Manual Occupation," nor was ever educated in the said Art, Mystery or Manual Occupation of a Baker, for the Space of Seven Years, as an Apprentice, contrary to the Form of the Statute aforesaid, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

## Armour, Army, Militia. Vide Soldiers, &c.

Sir Thomas Pigott for carrying Arms under his Garments, was committed, and his Arms taken away.

SEE Stat. 2 Edw. 3. c. 3. 7 Rich. 2. c. 13. 20 Rich. 2. c. 1. against Riding armed, &c. These Acts, especially the last, have had so good an Effect upon the People, that it was not put in Execution for above twenty Years after it was made, and then a Quarrel happening between Sir Thomas Pigott and Sir John Trevor, the first carried Arms secretly under his Garments, as well before the Judges of the King's Bench as others, for which he was committed by the Chief Justice, and his Arms taken from him, and not enlarged till the King's Pleasure was known.

Sir John Knight prosecuted for carrying a Gun, &c. but acquitted.

And I think few Prosecutions have been upon this Law since that Time; but there was one in Mich. 2. Jac. 2. against Sir John Knight, for walking about the Streets at Bristol with a Gun, and coming to Church so armed; it was tried at the Bar in B. R. and the Defendant acquitted.

Any Person may use Arms to defend himself, &c.

Any Person may use Force and Arms in the Defence of his Person or House against Robbers, or in Hue and Cry, or against those who shall assemble to do him any Violence; or to suppress Riots; but the safest Way is to be armed in Assistance of the King's Officers or Ministers of Justice.

The Arms of Recusants to be taken away. 4 & 5 W. & M.

The Armour of Recusants convicted shall be taken from them by Warrant of four Justices of Peace at Quarter Sessions, and yet they shall be charged to the Militia according to their Ability.

If they conceal their Arms, or give any Disturbance in the Delivery, one Justice may commit them for three Months without Bail. If they conceal them, to be committed, &c.

Any Justice may command Weapons to be taken from a Prisoner brought before him. A Justice may command, &c.

Arms, Munition, and Gun-powder shall not be imported without the King's License, under Pain of Forfeiture of the Goods, and treble the Value; one Moiety to the King, the other to the Prosecutor, by Action of Debt, &c. 1 *Ja. 2. c. 8.* Arms, &c. shall not be imported without the King's License.

Those who obtain Letters Patent for sole making of Arms, or Gunpowder, and put the same in Execution, are made Guilty of a Præmunire, and the Grants are void, any Clause of *Non obstante* notwithstanding. Patent for sole making Gunpowder, &c. void.

It is High Treason in such as agree to arm themselves, and go from House to House to get Assistance to pull down Inclosures, &c. but if such Persons have an Interest, it amounts but to an High Misdemeanor. *Poph.* It is Treason to assemble, &c. to pull down Inclosures.

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## Arrest and Imprisonment.

**A**RREST comes from the *French Word (Arreter)* which signifies to stop, or apprehend, and may be called the Beginning of Imprisonment. And as a Peer of the Realm may be arrested by Writ issuing out of the Court of King's Bench for a Contempt or Breach of the Peace, so any Person under the Degree of a Baron may be arrested by Warrant from a Justice of Peace for any Misdemeanor, or any Thing acted against, or contrary to the Peace of the Kingdom. *Dalt. 446.* A Peer may be arrested for Breach of the Peace by K. B. &c. *Dalt. 446.*

A Feme Covert may be arrested for a Riot; a Clergyman may likewise be arrested, though not in Divine Service, which is a Protection *pro tempore*; and so may an Infant, if he cannot find Sureties for the Peace, and if it be for Breach of any Statute wherein he is charged. A Feme Covert, a Clergyman may be arrested, &c. *ibid.*

If an Affray is committed, and the Offenders make their Escape into another County, the Constable may nevertheless pursue them in the other County, and in Case of Felony he may justify Breaking open Doors to take the Criminal. *Dalt. 451.* In an Affray, Constable may pursue. &c. *Dalt. 451.*

Mittimus must be under Hand and Seal. *H. P. C. c. 94.*

In what Cases private Persons may arrest. *3 Inst. 118.*

If any Breach of the Peace be made, Constable may put Offenders in the Stocks, &c. *H. P. C. c. 92.*

In what Cases Officers of Justice may break open Doors. *Moor 606. H. P. C. c. 90.*

Constables having a Warrant should lay hold on Offender.

In Case of Commitment by a Justice of Peace, it must be made to the common Gaol by Mittimus under his Hand and Seal, setting forth the Cause; and it ought to conclude, there to remain till he be delivered by due Course of Law. *H. P. C. c. 94.* unless otherwise appointed by some Statute.

Where a Person is dangerously wounded in an Affray, Parks are unlawfully hunted, where Guns are kept by Persons not qualified, and to apprehend in all criminal Cases where any one is in Danger of Life or Limb, any private Man may arrest another without Warrant; so also where a Felony is committed, every Man present must endeavour to take the Criminal, or may be fined and committed; and in such Case, any Person in Company of the Offenders, or suspected, though upon common Report only, may be apprehended; and if any Resistance be offered by such suspected Person, you may justify the Beating him, *3 Inst. 118.* and when taken, he must be brought to the Constable, and if he is not to be found, then to the Justice, in order to his Commitment.

If any Breach of the Peace be made in the View of the Constable, he may put the Offenders in the Stocks, or secure them in his own House, till he can bring them before a Justice; so he may where any Felony is committed, or Blow given, or if an Assault be made on himself. *H. P. C. c. 92.* And a Constable may likewise put a Felon in the Stocks for a reasonable Time, till he can get proper Assistance to convey him to Gaol.

A Justice of Peace has Power to commit those who offend against Penal Laws in his Presence and View, and any Person assisting him, (first making known the Cause, and desiring that the Doors may be opened) may justify Breaking open a House to apprehend a Felon where there is a legal Warrant to do it; so likewise to apprehend one who hath dangerously wounded another, and where an Affray is, and the Doors shut, and also upon Forceful Entry, the Constable may break open Doors; and so may the Sheriff upon an Outlawry in a Personal Action, and upon a Warrant for the Peace or Good Behaviour, and generally in all Cases where the King is Party.

A Constable having a Warrant for the Party to appear before a Justice of Peace, must lay hold on his Person, or else it is no Arrest. *Dalt. 445.*

When an Offender is arrested, and brought before a Justice, such Justice, where he hath Power by Statute



## Arrest and Imprisonment.

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to bind him over, or cause him to do any Thing, and the Offender refuseth, may commit him till he complies; and if he flieth into another County and is taken, there he shall be committed to Gaol where taken, and not where the Felony was done.

Any Gaoler may make his own House a Gaol for a Day and a Night, but a Justice is obliged to send the Offender to the common Gaol. *Cro. Eliz.* 829.

Where Imprisonment is directed by any Statute, and no Time limited for the Commitment of the Offender, it must be presently; and where no Time is limited for his Continuance in Custody, there it is in the Discretion of the Court. And he must be kept *in Salva Custod.* for if the Gaoler suffer him to go abroad, although he return to the Prison, it is an Escape, and the Gaoler may be fined, Imprisonment being a Part of the Punishment of the Offender. *3 Rep.*

If a Gaoler refuse to receive an Offender, the Constable must bring him to the Town where taken, where he is to be kept till the next Assises, when the Gaoler must be punished.

By Statute 22 & 23 *Car.* 2. c. 20. a Prisoner when taken, must not be carried to a Victualling-House without his Consent, so as to charge him with any Thing for Meat or Drink; nor more taken for the Arrest than the Law requires, nor any Reward exacted for keeping him out of Gaol, till he can find Bail, or agree; nor more taken for a Night's Lodging or other Expences, than shall be allowed by the next Justice, or in Sessions.

And by a Statute made 2 *Geo.* 2. no Bailiff shall carry any Person arrested to a Tavern, or Alehouse, without his free Consent, nor demand any greater Sum than the Law allows for the Arrest, or waiting, &c. nor shall carry any such Person to Prison within twenty-four Hours from the Time of the Arrest, or receive any greater Sum for one or more Nights Lodgings, or a Day's Diet, than is allowed by Order of Justices of Peace. *Stat. 2 Geo. 2.*

But the Offender must bear the Expence of his carrying to Prison, if able, and if not able, then the Town where he was taken must bear such Expence; and if they refuse, they may be distrained; and if the Prisoner refuse to be at the Charge (being able) the Justice may direct a Warrant to the High Constable or Petty Constable of the Town, where he hath any Goods, to sell as much as will satisfy the same.

What is to be done when an Offender is arrested, &c.

Gaoler may make his own House a Gaol, &c. *Cro. Eliz.* 829. Where Imprisonment is directed, &c. *3 Rep.*

Gaoler refusing, &c. *Dalt* 451.

Whether a Prisoner for Debt is to be carried, &c. *22 & 23 Car. 2. c. 20.*

Prisoner to bear the Expences, &c.

A Justice may grant, &c. *Dalt.* 442.

## Arrest and Imprisonment.

A Justice of Peace may at his Discretion grant a Warrant to take up any Person whom he shall suspect to be inclined to break the Peace. *Dalt.* 449.

**Officer, &c.** Sessions may award a *Capias* against a Person indicted, and by Virtue thereof, the Officer may break open Doors.

A sworn Officer needs not shew his Warrant.

At Common Law, the Gaoler could not put Irons upon a Prisoner, but by the Statute of *W. 2. c. 11.* 'tis enacted, That *carceri mancipetur in ferris.*

**What is a good Arrest, &c.**  
*Plowd.* 364.

If a Bailiff say to a Man, being present, I arrest you, although he touch him not, this is a good Arrest; and if the Party go away, it is a Rescue. 8 *Car. 1. B. R.* Sir *James Wingfield's Case.*

For Breach of a Statute-Law, an Infant shall not be imprison'd, unless expressed in the Statute. *Plowd.* 364. *a.*

**The Liberty of the Subject, favoured by Common Law.**  
*&c.* *Dalt.* 447.

The Liberty of every Subject is specially favoured by the Common Law, insomuch, that if an Officer (whose Actions are favourably interpreted) shall unduly imprison any Person by an usurped Jurisdiction, it is grievously punishable. *Magna Charta c. 29. 5 Ed. 3. c. 9.* and the Petition of Right, 3 *Car. 1. Co. 10. 75.* Therefore Commissions to arrest Men were held to be against Law. *Dalt.* 447.

**Hue and Cry.**  
*&c.* *Dalt.* 448.

Hue and Cry after a Person suspected of Felony is sufficient Cause to arrest him, tho' no Felony is committed. *Dalt.* 448.

**One taken in Execution, &c.**  
*Dalt.* 451.

A Person taken in Execution escapes into another County; yet the Sheriff, &c. upon fresh Pursuit may take him there, and he shall be still in Execution. *Co. Rep. 3. 52. b.* And so it is of a Person taken by a Constable on a Justice of Peace his Warrant.

If the Warrant be to arrest or take one that standeth indicted of Felony, then may the Officer justify the Killing of such a Person, if he shall resist or fly, or that he cannot otherwise be taken.

**Constable putting one in the Stocks, &c.**  
*Dalt.* 453.

A Constable or other such Officer, that shall imprison in the Stocks any Offender for Felony or Suspicion thereof, may lock the Stocks; and if need be, may also put Irons upon him, as it seemeth, and while he conveyeth him to Gaol or to the Justice, may pinion him, or otherwise make him Sure, that he cannot Escape.

**He who makes an Affray, &c.**  
*Sharrock v. Hannemer.*  
*Owen's Rep.*  
*p. 105.*

If he who makes an Affray do fly into a House, when the Justice of Peace cometh to arrest him, he may in fresh Suit break open the Doors and take him, tho' it be in another County, and in such Case a Man's House shall be no Refuge for him, because the Prince hath an Interest in

In the Matter. But it must be understood that the Justice in such Case can only send to a Justice of that County, whither he has pursued him, that the Justice of the County may commit him till he finds Sureties.

If a Justice of Peace commands a Constable to keep a Prisoner till next Day, he not having an Opportunity then to examine the Matter, in False Imprisonment brought against the Constable, the Justice's Verbal Order was judged a good Justification, tho' it was not alledged what the Cause was, which the Justice had to imprison him, which proves the verbal Order of a Justice of Peace to a Constable to be good. *Moor's Rep. p. 408, pl. 551. Broughton v. Mulshoe.*

Where a Justice's verbal Order is good.

But a Justice cannot in his Absence command any one to arrest another without a Warrant in Writing. *Mich. 14 H. 7. b. pl. 29.*

Justice in his Absence cannot command, &c.

A Battery committed by the Wife, she shall be imprisoned, and not the Husband. *Lib. Aff. 22. Pl. 87.*

One Justice of Peace may commit a Man who holds Lands by Force. *Mich. 21 H. 6. f. 5. A. B. pl. 14.*

Suspicion only, where no Felony is committed, is no Cause to arrest a Man: But if a Felony has been committed, and one doth suspect J. S. to have committed the same Felony, then he may arrest him, and a Justice may commit him. *Hill. 7 H. 4. f. 35. pl. 3. Trin. 27 H. 8. f. 23. a. pl. 22. Hill. 14 H. 8. f. 16. a. pl. 3.*

Suspicion where no Felony is committed, &c.

A. beats and wounds B. in such Manner, that he is in Danger of dying. C. arrested A. and imprisoned him till it might be known whether B. was likely to live or die. A. brought false Imprisonment against C. who justified, and it was allowed a good Plea in Bar. *Hill. 38 Ed. 3. f. 6. b. 7. Pasch. 10 H. 7. 20. a. pl. 8.*

A. beats B. and wounds him, &c.

A Justice of Peace grants a Warrant; this will justify the proper Person who arrests the Party against whom it is granted, but not to break open the Doors, unless in Case of Felony or Treason, &c. *Trin. 9 Jac. 1. Bulst. Rep. 1 pt. p. 146. Forster v. Hill. Brownl. Rep. pt. 1. p. 211. Monzey v. Johnson, Hill. 12 Jac. 1. Bulst. Rep. 2. p. 335. Wilson v. Dodd. Roll. Rep. 1. p. 135. l. 15.*

A Justice of Peace's Warrant, &c. Bulst. 1 p. 156. Brownl. 1. p. 211. Bulst. 2. p. 335. Rol. Rep. 1. p. 395.]

To call a Justice of Peace Fool when he is in the Execution of his Office, is a Misdemeanor for which he may be apprehended and imprisoned. *Mich. 39 Eliz. Moor's Rep. p. 247. pl. 389. Cro. Eliz. p. 78. p. 38. Simmons v. Sweet.*

One may be imprison'd, &c. Moor's Rep. 247. Cr. Eliz. p. 78.

A Constable cannot justify imprisoning of one who disturbs him in doing his Duty, tho' he give him ill Language, or make an Assault upon him, or otherwise ill behaves himself. *Trin. 31 Eliz. Savil's Rep. p. 97. pl. 178.*

A Constable can't justify, &c. Sav. Rep. 97.



Stolen Goods,  
&c.  
Bridgm. 60.

*A.* had lost five Heifers, and he took out a Warrant against *B.* and found one of them in his Custody, and was bound over to prosecute, which he did; but *B.* was acquitted, and brought an Action, but Judgment for *A.* *Bridg. Rep. p. 60. Trin. 14 Jac. 1. Weab. v. Wells.*

To leave a  
Child in a Pa-  
rish, &c.  
1 Leon. 327.  
Moor p. 284.  
Cr. Eliz. 287.  
Pop. 12. Owen.

If any Person brings a Child into a Parish, and leaves it there without Keeping or Nourishment, a Constable may arrest him, and carry him before a Justice of Peace, who is to examine him, and bind him over to be punished, for 'tis a great Offence. *Trin. 31 Eliz. Leon. 1. pt. 327. pl. 462. Beale and Carter's Case. Moor's Rep. p. 284, pl. 36. Cro. Eliz. p. 287. Pop. Rep. 12. Owen 8.*

A Justice's  
Warrant, &c.  
Trin. 9. Jac. 1.  
Foster v. Hill.

A Justice of Peace in his Warrant will not justify a Constable in breaking into a House to apprehend any Person for a less Crime than Felony or Misprision of Felony, &c. *Trin. 9 Jac. 1. p. 146. Forster v. Hill.*

Arrest in the Night is good, else the Party may escape. 9 Co. 66.

All that come  
to Sessions, &c.  
Lamb. 402.

All that come to the Sessions for publick Service, or upon Compulsion, upon Complaint and Examination of the Matter by Oath, shall be freed from any Arrest upon Original Process. *Lamb. 402.*

Arrest on a  
Sunday void.  
29. Car. 2.

Arrest on a Sunday on a mean Process, &c. void by 29 Car. 2. The next Justices or Sessions may adjudge what is fit to be taken for Lodging and other Expences while under Arrest before Imprisonment. 22 & 23 Car. 2.

An Innocent  
Man arrested,  
&c.  
Lamb. 233.

A Man is slain, or a Felony committed, and an innocent Man is arrested for the same, he cannot be delivered but by due Course of Law. *Lamb. 233.*

See more of Arrests under Title *Constable.*

## A Warrant to arrest a suspected Person.

**W** Hereas a Felony hath been lately committed, &c. wherein *A. B.* of your Parish is suspected to be concerned: These are therefore in his Majesty's Name to Command you forthwith to bring the said *A. B.* before me, or some other Justice of Peace for this County, to answer unto all such Matters as shall be objected against him by, &c. relating to the said Felony; and hereof fail not. Given, &c.

Artificers.

## Artificers.

**P**ersons contracting with, or endeavouring to persuade any Artificer in Wool, Iron, Steel, &c. to go out of this Kingdom into a Foreign Country, and thereof shall be convicted in any of the Courts at *Westminster*, the Assizes or Quarter-Sessions, shall be fined, not exceeding 100*l.* and be imprison'd three Months, and till the Fine is paid.

Persons convicted of enticing Artificers, &c. 5 Geo.

Artificers going out of his Majesty's Dominions to exercise or teach their Trades to Foreigners, not returning within six Months after Warning given by the Ambassador, Envoy, &c. where such Artificers are resident, shall be incapable of taking any Legacy, or being an Executor, &c. be disabled to hold Lands by Descent, Devise, &c. forfeit all their Lands, and be deemed Aliens. Prosecution must be in twelve Months.

Artificers going into foreign Parts, &c. 5 Geo. c. 27.

A Justice of Peace, on Complaint to him that any Person is attempting to draw away any such Artificer, or that any Artificers are contracting or preparing to go out of his Majesty's Dominions, may send his Warrant to bring the Person before him; and if he by Oath or Confession of the Party, be found Guilty, may bind him over with Sureties to the next Assizes or general Quarter-Sessions, where he must give Security not to depart the Realm. Not giving Security in either of the Cases, to be imprison'd.

Justice on Complaint may grant Warrant, &c. Ibidem.

### A Warrant to apprehend an Artificer going to leave the Kingdom.

**W**hereas Complaint hath been this Day made unto me W. B. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, That A. B. of your Parish hath contracted, or is preparing to go out of his Majesty's Dominions to exercise his Art and Trade of, &c. or teach it to Foreigners, contrary to an Act of Parliament made in that Behalf: These are therefore to Command you to apprehend the said A. B. and bring him before me or some other Justice of the Peace for this County, to answer the Complaint, and be proceeded against according to Law. Given, &c.

*Warrant.*

## Assault.

Assault, what it is.

**A**ssault is derived from the old *Latin* Word *Assultus*, which signifies a Leaping on another, and is, when one unlawfully sets upon the Person of another, offering to beat him, tho' he beats him not, or striking at him, tho' he strikes him not.

What is Battery.

Battery is the wrongful Beating or Wounding of another.

Dalt. 282.

Keil. 556.

In what Cases Assault may be justified.

Hil. 35 H. 6.

f. 50 & 51 a.

pl. 15. Pasch.

21 Ed. 4. l. 6. a.

pl. 15.

In Assault and Battery, all are Principals and no Accessories.

A Man may justify the Striking another to defend his Person from being wounded: He may likewise justify the Beating one in Defence of his Wife or Child, as the Wife may beat one who would assault the Husband; a Man may also justify Beating one who assaults his Father or Mother, but not his Servant, he hath his Action. *Black. 40.* A Servant may likewise justify Striking another in Defence of his Master.

Parents have a Power over their Children.

Pasch. 21 Ed. 4.

f. 6. a. pl. 17.

22 Ed. 4. f. 45.

a. b. pl. 10.

Parents have a natural Power over their Children 'till they come of Age, and 'till then they may chastise them: And Masters have a Civil Power over their Servants, Schoolmasters over their Scholars; Gaolers over their Prisoners; and any Person over his Kinsman, being Lunatick, and attempting to do Mischief.

Resistance justifiable in Defence of Goods.

Pasch. 10 Ed. 4.

l. 6. b. pl. 15.

If any Person would by Force wrongfully take away my Goods; whether I have a Property in them, or a bare Possession only, Resistance is justifiable; as likewise in Case another endeavour to put you out of Possession of Lands &c. And a Man may beat one in Defence of his Freehold, Farm, Water-course or Highway.

Mich. 2 H. 6.

f. 8. a. pl. 41.

Pasch. 32 H. 6.

f. 18. b. pl. 20.

And when the Life of any one is in Danger by beating or otherwise, any Person may endeavour to resist, and that by beating him who offereth the Violence. *Dalt. 206.* But if he who is assaulted may escape with his Life, or without being wounded, it is not lawful for him to beat or wound the Person of another.

If two agree to Play, &c.

Case of Got

and Machel

& al.

If two agree to Play at any Game, and one is Hurt, 'tis no Breach of the Peace, because it was by Consent. But if, after the Play ended, one will assault and beat another for any Wrong conceived in the Play, that is a Breach of the Peace. *Got*, a Barrister of *Greys-Inn*, and a Justice of Peace of *Suffex*, was sent for to an Alehouse by *Machel* and *Tully*; when he came thither, *Tully* went out of the Room to prevent any Body's coming to assist *Got*, whom *Machel* beat so much, that he broke his Arm; and



and for this Battery he and *Tully* were indicted and found guilty, and *Machel* was fined 1000 *l.* and *Tully* 500 *l.* and both committed for a Month without Bail, and to find Sureties for their good Behaviour, for seven Years.

A Constable may justify his Laying of Hands on any one who is assaulting another.

Maker of an Assault, Battery, &c. on the Body of another, is to be fined.

Servant or Workman convicted by two Witnesses before two Justices of Peace, of maliciously assaulting his Master, Dame, &c. is to be imprison'd a Year, and any other corporal Punishment, saving Life and Member.

And where a Man is assaulted, he may bring an Information in the Crown-Office, or have Action at Law of Trespas and Assault.

No Assault to thrust one in a great Crowd.

By an Act of 7 of *Geo. 2.* for the more effectual Punishment of Assaults with Intent to commit Robbery, it is enacted, that after 1 *May* 1734. any Person or Persons convicted of Assaulting others with offensive Weapons, and a Design to rob, shall be transported for seven Years, and such Convicts breaking Gaol, or unlawfully returning from Transportation, shall suffer Death.

*Pasch. 21 H. 7. f. 21. a. pl. 5.*

Assaulter is to be fined.

Servant, &c.  
5 *Eliz. c. 4.*  
*Cr. 84. a.*

## A Warrant against a Person for Assaulting another.

**W** Hereas Complaint is made unto me by *A. B. of, &c.* that *C. D. of your Parish* did lately Assault and Beat him the said *A. B.* and gave him several Wounds in his Head, and other Parts of his Body: These are therefore in his Majesty's Name, to command you to apprehend the said *C. D.* and to bring him before me or some other of his Majesty's Justices of the Peace for this County, to answer the Premises, and to be dealt withal according to Law. Given, &c.

## An Indictment for an Assault.

Staff. *Jf.* **T** HE Jurors, &c. Do present, That *T. P.* of the Parish of *H.* in the County aforesaid, on the 30th Day of January, in the seventh Year of the Reign of our said Sovereign Lord the King, at the Parish aforesaid, in the County aforesaid, with Force and Arms made an Assault in and upon *J. O.* then and there being in the Peace of our said Sovereign Lord the King, and then and there beat, wounded

## Assizes. Attainder, &c.

*wounded and ill treated the said J. O. so that his Life was despair'd of, and then and there committed other Enormities against him, to the great Damage of the said J. O. against the Peace of our said Sovereign Lord the King, his Crown and Dignity.*

Assize of Willets, &c. See Fuel.  
Assize of Bread. See Weights, &c.

## Assizes.

All Justices under the Degree of Peers are to attend at the Assizes, or be fined.

**A**LL Justices of Peace, under the Degree of Peers, are obliged twice in the Year to attend the Judges of Assize in their Circuits, under Pain of being fined for their Non-Appearance; and the first Day of every Assizes, all the Justices of Peace are called over, and the Defaulters marked and fined, unless excused by the said Judges, for Sickness, or some other extraordinary Cause hindering their Attendance at the Assizes.

And also to transmit to the Assizes all Recognizances, &c.  
1 & 2 Ph. & M.  
c. 13.

And whether they attend in Person or not, they are obliged to transmit to the Assizes, all Recognizances, Informations, Examinations, &c. which they have taken concerning any Prisoners who are to be tried at the next Assizes, that the Judges of Assize may proceed thereon; and if they neglect to send any of them, or are not present themselves, or their Clerks, to examine and prove the same, they will be grievously fined, as I have seen it often done.

Examination taken by Justices, &c.

*N. B.* The Examinations must not be on Oath, but must be signed by the Prisoner and Justice, and the Informations must be on Oath, and sign'd by the Witnesses.

## Attainder and Conviction.

What is Conviction by Law.  
Dal. 405.

**A** Man is properly said to be indicted when the Offence is first found by the Grand Inquest, or other Jury of Inquiry. Conviction is, when the Offender is found guilty by a second or petty Jury, after having pleaded Not guilty, or shall confess the Offence upon his Trial,

or

## Attainder and Conviction.

79

er is pronounced outlawed for the same at the County-Court.

But by divers Statutes an Offender may be convicted out of Court, either upon the View and Record of the Justices of Peace, or by the Confession of the Offender, or upon Examination of Witnesses before one or more Justice of Peace out of Sessions, or sometimes upon the Certificate or Presentment of a Justice of Peace in the Sessions, and sometimes by Confession or Examination of Witnesses in Court, without any Verdict taken. *Crompt.* 130, 131.

Attainder is, when after Conviction Judgment is given against the Offender.

After Conviction, or *Fugam fecit* returned by the Coroner, all the Goods, the Corn on the Ground, the Profits of the Fee-Simple Estate for a Year and a Day, and the Issues of intailed Lands during Life, and all Debts due upon any Securities, are forfeited to the King; and the Party, to whom the King shall give the same, may bring his Action in his own Name to recover them.

At Common Law, on *Fugam fecit* by a Felon returned by the Coroner; or if he did not fly, but was indicted, the Sheriff or Coroner might seize his Goods before Trial for the Use of the King, which ought to be appraised: But then after the Appraisement they ought not to be removed out of his House before Attainder, if the Offender could give Security that they should not be imbezilled; if not, then they were to be delivered to the Neighbours, who ought to keep them during his Imprisonment; and he is to have a reasonable Maintenance out of them 'till Conviction.

And this is confirmed by Stat. 1 R. 2. c. 3. and the Party imprisoned shall recover double the Value of his Goods seized by any Officer, or taken out of his House before Conviction.

But the Offender may sell his Goods for his Maintenance in Prison.

In Attainder by Outlawry, if 'tis erroneous, the Party may appear at any Time, and reverse it by Writ or Error.

At Common Law it was an Error in Fact, for the Party outlawed to be beyond Sea at the Time of the Judgment pronounced upon the Exigent; for which the Outlawry might be reversed in all Cases. But Stat. 6 Ed. 6. takes away this Advantage in Treason; only there is a Proviso, that if the Party shall yield himself to the Chief Justice within a Year and a Day after the Outlawry pronounced, he shall be admitted to traverse the Indictment. Sir Thomas Armstrong, after being taken

Conviction by  
Stat. 5 H. 4. c. 6.  
13 H. 4. c. 7.  
11 H. 6. c. 11.  
3 Jac. 1. c. 4.

What is Attainder. Dalt.  
406.  
What is forfeited, &c.

When and how the Offender's Goods are to be appraised, &c.

Party to recover double the Value, &c.  
Dalt. 363.

May sell his Goods, &c.

5 & 6 Ed. 6.  
c. 11. takes away Advantage of Error for being beyond Sea.



taken in *Holland*, and brought over in Custody hither, would have had the Benefit of this Clause, but it was denied him.

Attainted of Felony, &c.

One Attainted of Felony may be arraigned for Treason, committed before or after the Attainder. *Lamb.* 557, 558.

One Attainted of Felony may be sued in an Action of Debt upon Obligation, and Execution shall be had. *3 Cro.* 517.

One attainted of Felony may purchase.

One attainted and pardoned may sue for a Wrong done before; or purchase Land. *3 Cro.* 516.

One attainted may be arraigned, &c.

One attainted upon an Appeal of Robbery may be arraigned upon an Appeal of Robbery at another Suit. *Lamb.* 558.

So may one standing Mute.

One attainted of Felony, by standing Mute, may after be arraigned of another Felony. *Lamb.* 558.

One attainted of Felony cannot after be arraigned for another Felony, so long as the first is unpardoned, unless it be in the Cases before. *Lamb.* 557.

After Attainder, Felon's Grant bindeth all Persons except the Lord, &c.

After the Attainder, the Felon's Grant of Goods or Lands bindeth all Persons except the Lord to whom they escheat. *Dalt.* 405.

After Attainder, &c.

Rights of Entry (though not of Action) given to the King by Attainder for Treason: So Conditions personal, Choses in Action, as Statutes, Recognisances, Obligations. *3 Co.* 3. a.

But a Condition or Proviso inseparably annexed to the Person and Mind of the Party; as of a Proviso, if he shall be minded to revoke certain Uses, and signify his Mind in Writing, &c. there it is not in the King by Attainder. *7 Co.* 13. a.

Grant of Wine-Licence, &c.

Grant of Wine-Licence taken in another's Name in Trust, forfeited by Attainder of Felony. *Hob.* 214.

A Dignity intail'd, forfeited, *7 Co.* 34.

A Dignity intailed (the Earldom of *Westmorland*) forfeited by Attainder for Treason, being an Hereditament at Common Law. *7 Co.* 34.

So of an Annuity, being of Inheritance. *Ibid.*

## Badgers.

**A**R E licensed Buyers, Sellers or Transporters of Butter, Cheese, Corn, &c. and they must be married Men and Householders of Thirty Years of Age, licensed in Sessions of the County where they have lived three Years, under the Hands and Seals of three Justices *Quorum unus*, &c. this License is in Force for one Year, and no more, and must be entred by the Clerk of the Peace, &c. who for writing it has 12*d.* and for Entry 12*d.* and the Persons to whom granted must enter into Recognisance at Sessions that they will not forestall or ingross, or do any Thing contrary to the true Meaning of the Statutes made against Forestallers, Ingrossers and Regrators; for writing whereof they are to pay 8*d.* for Entry 4*d.*

Any Person acting as a Badger without License, forfeits 5*l.* one Moiety to the King, and the other to the Prosecutor. King's Moiety to be estreated according to the usual Manner, and Prosecution levied by *Fieri facias* or *Capias*.

Purveyor, Badger, &c. bargaining for any Victuals or Grain in the Markets of *Oxford* or *Cambridge*, or within five Miles of them, shall forfeit quadruple the Value, &c. and three Months Imprisonment, without Bail, &c. except the Queen is there, or within seven Miles. Conviction before two Justices of the County, together with Chancellor, Vice-Chancellor, or his Commissary.

Who are Badgers. 5 Eliz. c. 12.  
Drover like Qualifications.

Badger buying Grain, &c.

Badgers, &c. buying Grain, &c. out of open Fair or Market to sell again (unless there be special Words in this License to warrant the same) forfeit 5*l.* to be divided as before; Justices at their Discretion to take Recognisances of Badgers, &c. not to forestall, ingross or put in Practice any Thing contrary to 5 & 6 Edw. 6. cap. 14.

Badger buying Grain, &c. out of open Fair or Market, &c.

The Inhabitants of *Westmorland*, *Cumberland*, *Lancaster*, *Chester* and *York*, are excepted out of the Statute of 5 Eliz. c. 12.

## The Condition of the Recognifance taken in the Sessions.

**T**HAT he shall not forestal, regrate, or ingross, or do any Thing contrary to the true Meaning of the Statutes made against Forestallers, Regrators and Ingrossers, or any Thing therein contained.

## A License for a Badger and Higler.

Essex, ff. **A**T the General Quarter-Sessions of the Peace held at, &c. for the County aforesaid, this Day, &c. We A. B. C. D. E. F. &c. Esqrs; Justices of the Peace for the said County (one whereof is of the Quorum) have licensed, and by these Presents do license and appoint G. H. of, &c. to be a common Badger, Carrier, and Buyer and Seller of Corn and Grain in any Market or Fair whatsoever, and the same to convert into Meal, and to carry to and vend in the City of London, or any other Fair or Market, from Time to Time, and at all Times for and during the Space of one Year from the Date hereof, so as he do Use and follow the said Business, according to the true Intent and Meaning of the Statutes in that Case made and provided against Forestallers, Ingrossers and Regrators, and not otherwise. In Witness, &c.

## License to a Higler.

**L**icense to a Higler, is to license and allow G. H. to be a common Higler, Carrier, Buyer and Seller of Hens, Chickens, Capons, Eggs, and any other dead Victuals (except such as are prohibited by Law) in any Market whatsoever, for one Year from the Date hereof, provided he do use and follow the said Business and Dealings, according to the Statutes in that Case made and provided.

A Warrant



A Warrant to levy the Forfeiture against a Badger for buying and selling Corn without a License.

Essex, ss. **W** Hereas A. B. of, &c. hath this Day made 5 Eliz. c. 12;  
Oath before us, that C. D. of, &c. hath  
bought Corn and Grain in the Market of, &c. in the County  
aforesaid, and the same hath sold again in the Market of,  
&c. within four Miles of the said Market, &c. where he  
bought the same without being legally licensed thereto by the  
Justices of the Peace for the said County in their Quarter-  
Sessions, as he ought to be, and contrary to the Acts of Par-  
liament in that Case made against Regrators, whereby the  
said C. D. hath forfeited the Sum of 5 l. These are there-  
fore in his Majesty's Name to command you to levy the said  
Sum of 5 l. forfeited as aforesaid, upon the Goods and Chat-  
tels of the said C. D. by Distress and Sale thereof, ren-  
dring the Overplus (if any) to the said C. D. and that  
you do pay the same as the Act of Parliament in that Be-  
half made directs. Given, &c.

## Bail.

**B**AIL (from the French Word *Bailler*) (*i. e.*) *tradere*, Bail, what,  
signifies the Delivery of one under Arrest into the  
Hands of his Sureties for his Appearance again at a Day  
and Place assigned; and the Difference between Bail The Difference  
and Mainprize is, that Mainpernors are only Sureties, between Bail  
but Bail is a Custody, and therefore the Bail may re- and Mainprize.  
lease the Prisoner at any Time and Place, or may keep  
the Criminal as a Prisoner till the Day of the Appear-  
ance; for the Bail is *Corpus pro Corpore*, and if he  
escape, they must surrender themselves. *Poph.* 96.  
*Jenk.* 129. And Justices in such Case ought to commit  
the Prisoner in Discharge of the Bail, or put him to  
find new Sureties; and the Justices may require new  
Sureties in Case of insufficient Bail. *Co.* 156. a. *Et*  
157. a.

## The Condition of the Recognifance taken in the Sessions.

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# A Warrant to levy the Forfeiture against a Badger for buying and selling Corn without a License.

Essex, ss. **W** Hereas A. B. of, &c. hath this Day made 5 Eliz. c. 12;  
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 bought the same without being legally licensed thereto by the  
 Justices of the Peace for the said County in their Quarter-  
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 said C. D. hath forfeited the Sum of 5 l. These are there-  
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## Bail.

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 the Prisoner in Discharge of the Bail, or put him to  
 new Sureties; and the Justices may require new  
 Sureties in Case of insufficient Bail. *Co.* 156. a. &  
 157. a.



Stat. West. 1.  
c. 15.  
3 Edw. 11.  
the Rule, &c.

The Statute *Westm.* 1. cap. 15. 3 *Ed.* 1. directs where Bail shall be taken, and where not; and this seems to be the Rule even to this Day; for the Statute 3 *Hen.* 7. cap. 3. & 1 & 2 *P. & M.* cap. 13. which gives Justices of Peace Power to bail, have Relation to this very Statute. 2 *Inst.* 190. But the Statute of 1 *R.* 2. cap. 3. mentioned by some of our modern Authors as being in Force, is repealed and altered by 3 *Hen.* 7. cap. 3.

Sureties and  
Sum generally  
in the Justice's  
Discretion.

Where no certain Sum is appointed by Law, there both the Sum and Sureties are left to the Discretion of the Justice; but if the Crime be Felony, they ought not only to take very sufficient Persons for the Parties Appearance, but also bind them in a very large Sum.

The usual Number of Sureties are two, and the usual Sum under Felonies 40*l.* at the least.

Justices may  
bail, &c.

Justices may bail any Prisoner for an Offence committed, of which they are proper and legal Judges, and no others.

And if Justices bail any Person not bailable by Law, they may be fined by the Justices of Gaol-Delivery, or prosecuted at Law for a negligent Escape. And if Bail be refused where the Person is bailable by Law, it is not only a Misdemeanor and fineable, but also an Action lies against the Justice. *Westm.* 1. cap. 15. *H. P. C.* 97. *Style* 182. The Justices may examine the Sureties upon Oath.

Taking slender Bail is likewise fineable.

Where no Fe-  
lony is com-  
mitted, &c.

If a Person be brought before a Justice, and it appears that no Felony is committed, he may discharge him; but if a Felony be committed, though it does not appear that the Party accused is Guilty, yet he cannot discharge him, but must commit or bail him. *H. P. C.* 98.

Justices ought  
to be very cau-  
tious how they  
can imprison.

In short, Bailing by a Justice of Peace is a nice and critical Point, and therefore not much used by Justices of Peace, who ought to be very cautious in it, especially in Felonies or higher Crimes. I shall therefore omit inserting in what Cases, as Treasons, &c. Bail is taken away by Statute; and also in what small Crimes Bail is not to be taken, but an immediate corporal Punishment to be inflicted by Commitment, since the other Chapters in this Book have and will sufficiently shew it, and the Crimes not mentioned to be bailed, will speak for themselves. I shall therefore only set forth in what Cases Bail is allow'd by Law.

Accessaries in Felony, before and after the Fact, may be bailed before the Principal is convict, but after the Principal is attainted they should not be bailed. Who are bailable by the Justices.

One taken and indicted for a flight Suspicion of Felony, may be bailed. *Lamb.* 335. *F. N. B.* 249, 250, 251.

A Murderer indicted at the King's Suit, and acquitted within the Year and Day, shall be either committed to Prison or bailed until the Year and Day be passed, that the Appellant may appeal within the Time. 3 *H.* 7. and *Fitz.* 151. *G.* Murderer acquitted bailed for a Year and a Day.

One Convict of Felony, and remaining in Prison, obtains the King's Pardon, the Justices of Gaol-Delivery may bail him, that he may come in and plead his Pardon at the next Gaol-Delivery. He is bailed if he has the King's Pardon.

If *J.* be Accessary to two, and but one Principal is attainted, *J.* shall not be bailed.

If the Principal die in Prison or be attainted of another Felony, the Accessary is bailable. *Fitz.* *Coron.* 378. *Bro. Mainprize* 91.

Persons indicted of any Trespass, not concerning Life or Member, are bailable. *W.* 1. *c.* 15.

A Person imprisoned by Process of Sessions, is bailable by two Justices (*Quorum unus*) out of Sessions. *Lamb.* 337.

See the excellent Statute made 13 *Car.* 2. *c.* 2. in Favour of the Liberty of the Subject, appointing how and in what Cases, when and by whom Prisoners shall be bailed and discharged; but this does not directly concern the Justices of Peace.

No Person arrested for Manslaughter or Felony, or Suspicion thereof (being bailable by Law) shall be Let to Bail or Mainprize by any Justice of Peace, but in open Sessions, or by two Justices of Peace at least (*Quorum unus*) and both to be present together at the Time of the said Bailment; which Bailment the said Justices shall certify in Writing, subscribed with their Hands at the next Gaol-Delivery. No Person arrested for Suspicion of Felony, shall be bailed but in Sessions or two Justices.

Also before the Bailment of such Prisoner, the same Justices, or one of them, shall take the Examination of the Prisoner, and Information of them that bring him touching the Fact and Circumstances thereof, which shall be put in Writing before they make the Bailment: Which Examination, Information and Bailment they shall certify at the next Gaol-Delivery. 1 *Ed.* 2 and 2 *Ed.* 3 *Pb.* *Ed.* *M.* *cap.* 13. What to be done before they bail him,

Cause of Commitment to be specified in the *Mittimus*.

The Justices of Peace which shall send any Criminal to Gaol, ought in their *Mittimus* to shew the Cause of the Commitment, to the End it may appear, whether such Prisoner be bailable or no.

A Criminal is obliged to offer Bail, otherwise the Justice may commit him.

Where Judges personally commit, &c.

If the Lord Chancellor or Lord Keeper, Judges of *K. B.* or *C. B.* or Justices of Assize commit any, they are not bailable by Justices of Peace.

In Treason neither Principal nor Accessary are bailable; and generally in all Cases where Imprisonment is inflicted as a Punishment, and not only as a Means to keep in Durance, or where the Justices have no Cognizance of the Cause, they can't bail.

8 Eliz. c. 2. Persons procuring one to be arrested in another's Name, not bailable.

If any Person shall procure one to be arrested in another Man's Name, he not knowing thereof, or without his Consent; such Offender being convicted thereof, shall suffer six Months Imprisonment without Bail, and before his Delivery pay to the Party so arrested treble Costs, Damages and Expences; and also pay unto the Person, in whose Name he procureth such Arrest, ten Pounds for every such Offence. 8 *El. c. 2.*

In Case of Murder Justices of Peace can't bail, but *K. B.* may, but do not in Discretion, for Stat. *W.* extends not to that Court. *Cr. 99. H. P. C. B. R.* can bail after a Coroner's Inquest, but not after a Grand Jury.

Indictment removed by *Certiorari*, and no Bail put in above, the Court below may proceed (without a *Procedendo*.) *Style 321.*

If Proceedings be removed by *Certiorari*, and after sent back by a *Procedendo*, yet the Bail is for ever discharged. *Co. Bail and Mainprize f. 26.*

When one is wounded and in peril of Death, the Offender is not to be bail'd quousque.

If a Man be wounded in Peril of Death, the Party so wounding shall be arrested and not be bailed, till perfect Knowledge be had whether he so hurt shall live or die. *Westm. 1. 3 Ed. 1. c. 15. 3 Hen. 7. ca. 1. Co. Inst. 2. 186. Rol. Rep. Mich. 13 Jac. 1. p. 268. pl. 43. B. R. Poyne's Case, Latch pl. 2. Herbert and Vaughan's Case, Popb. Rep. 153.*

Where a Man kill'd another in his own Defence, and he was refused to be bail'd. 25 *Ed. 3. 44 Ed. 3.* 'Tis said to be in the Judges Discretion.

No Bail in *B. R.* on Indictment for Murder.

Sir *Nich. Poyne* and his Son were indicted for Murder, and committed to the *Marshalsea* without Bail or Mainprize. The King's Bench was moved to bail them, but it was refus'd; and *Coke Ch. Justice* declared, That for the Death of a Man, he would not bail any one. *Bull.*



p. 113. *Mich. 13 Jac. 1. 1 Rol. p. 268. pl. 43. S. C.*  
 Tho' the Judges may bail in Murder, if they see Cause,  
 but not the Justices of Peace. *Mich. 21 Edw. 4. f. 70.*  
*b. 71. pl. 55. Wingfield's Case.*

If one committed by one Justice of Peace be bail'd by two other Justices, not knowing of any Matter why he ought not to be bail'd, these Justices ought to be fined by the Statute of 1 & 2 Ph. & M. c. 13. for they offend if they bail him, who by the Statute of *Westm. 1. c. 15.* is notailable; and therefore they at their Peril ought so to inform themselves before they take Bail of the Matter, that they may be well satisfied that such an one isailable by Law. And therefore they are to observe well the Statutes of *Westm. 1. c. 15.* who is, and who is notailable by Law. And this was the Opinion of the whole twelve Judges. *Trin. 37 Eliz. Poph. Rep. p. 96. pl. 1.*

Where the Party wounded is in Danger of Death, he who wounded him is notailable. *Mich. 22 Ja. 1. Poph. Rep. p. 153. Lewis versus Jeffereys.*

Bail for Felony and Murder may keep the Criminal as a Prisoner till, &c. *Poph. 96. Jenk. 129.*

He that knowingly receives one outlawed is notailable. *Blac. 42.*

A Man who is committed by the Privy Council is notailable; so if by the King's personal Command. 1 *And. the Privy*  
 298. but *vid. Hawk. P. C. Vol. 2. Book 2. c. 15. Sect. Council not*  
 66. 7, 8, 9, 70, 71. & *Stat. 16 Car. 1. c. 10. pl. 8.*ailable.  
 all very material to this Point. *Mich. 33 H. 6. p. 28. b.*  
*Hill. 12 Ja. 1. 1 Roll. Rep. 134. Brower's Case. 1 Roll.*  
*Rep. 219. Sir Samuel Salkingstone's Case. And. Rep. 1. pt.*  
 297, 298. by all the Judges of England.

## A common Recognizance for Bail.

Essex, ss. **B**E it Remembred, That on the first Day of April, in the Eighth Year of the Reign of our Sovereign Lord the King, A. B. of (such a Place) in the said County, Carpenter, E. D. &c. and I. F. &c. personally came before me E. F. one of the Justices of our said Sovereign Lord the King, assigned to keep his Peace in the said County, and acknowledged themselves to be indebted to our said Sovereign Lord the King, in the Manner and Form following (that is to say) the said A. B. in twenty Pounds of lawful Money of Great Britain, and each of the said E. and I. in ten Pounds of like Moneys, to be respectively made and levied of their several Goods and Chattels,

*Lands and Tenements, to the Use and Behoof of our said Sovereign Lord the King, his Heirs and Successors, if the said A. B. shall make Default in the Performance of the Condition within written.*

### A Recognizance where Bail is taken for a Felon.

\* If in Prison,  
say, In Prison.

Essex, ss. **B**E it Remembred, That on the eighth Day of April, in the eighth Year of the Reign of our said Sovereign Lord the King, T. M. and N. O. (of such a Place) in the said County, Gent. came before us I. S. and K. L. two of the Justices of our said Sovereign Lord the King, assigned to keep the Peace in the said County, and also, &c. (Quorum unus) (or one of us being of the Quorum) at L. in the County aforesaid, and became Bail for (or took to Bail) until the next Gaol-Delivery to be holden in the said County, one N. K. (of such a Place) in the said County, Labourer, taken and detained \* for the Suspicion of a certain Felony by him committed (as it is said) and undertook (to wit) the said T. M. and N. O. severally under the Penalty of 60l. of good and lawful Money of Great Britain, and the said N. K. undertook in 100l. of like Money, to be respectively levied of the Goods and Chattels, Lands and Tenements of them and every of them, to the Use of our said Sovereign Lord the King, his Heirs and Successors, if the said N. K. shall not personally appear at the next Gaol-Delivery of the County aforesaid, before the Justices of our said Sovereign Lord the King, assigned to deliver the said Gaol, to be acquitted, (or rather) to stand discharged of the Felony aforesaid, and then and there to answer to our said Sovereign Lord the King, of and upon all Matters which shall then and there be objected against him, (or be laid to his Charge.) Dated under our Seals, &c.

**T**HE Condition of this Recognizance is such, That if the within bound N. K. do personally appear before his Majesty's Justices, assigned to keep the Peace in the within named County of E. at the next General Sessions of the Peace to be holden for the said County at C. in the County aforesaid (or before his Majesty's Justices of Gaol-Delivery at the next general Gaol-Delivery to be holden for the said County of E.) then and there to answer our said Sovereign Lord the King, for and concerning the felonious Taking and Stealing of, &c. (If charged but with Suspicion of Felony,

lony, then say, the Suspicion of his felonious, &c. where-  
of he stands charg'd) wherewith he stands charg'd be-  
fore, (naming the Justice that committed him, &c.)  
and to do and receive, &c. and not to depart the  
Court without License, then this Recognizance to be  
void, &c.

*Note,* That it is Felony to acknowledge a Recogni-  
zance or Bail in the Name of a Person not knowing  
thereof, or consenting thereto. 21 *Jac.* 1. c. 26. *Cr.*  
*Eliz.* 531. 4 & 5 *W. & M.* c. 4.

'Tis Felony to  
acknowledge a  
Recognizance,  
&c. fully.

**Bailiff.** See **Extortion.**

**Baker.** See **Weights and Measures.**

## Bankrupt.

**B** Ankrup Fraudulently conveying his Lands or Goods,  
or any Estate to the Value of 20*l.* to delay his Cre-  
ditors, and not discovering or delivering a Particular there-  
of, if he can, to the Commissioners, or shew some acci-  
dental Cause by which he is disabled to pay his Debts,  
shall be indicted at the Sessions of that County where  
he became Bankrupt; and upon Conviction shall be set  
in the Pillory two Hours, and have one of his Ears nailed  
to it, and cut off. 21 *Jac.* 1. c. 19.

By a Stat. made 5 *Geo.* 2. It is enacted, that if any  
Person or Persons, who since the 14th of *May*, 1729.  
or who hereafter during the Continuance of this  
Act, hath, or have been, or shall be declared to be a  
Bankrupt or Bankrupts, shall not within forty-two Days  
after Notice thereof in Writing, to be left at the usual  
Place of Abode of such Person or Persons, or personal  
Notice if in Prison, and Notice given in the *London*  
*Gazette*, that such Commission, or Commissions is, are,  
or have been issued, and of the Time and Place of a  
Meeting of the Commissioners therein named, or the  
major Part of them, surrender themselves to the said  
Commissioners, and sign or subscribe such Surrender, and  
submit to be examined from time to time upon Oath, or  
being of the People called Quakers, upon the solemn  
Affirmation by Law appointed for such People, and in  
all Things conform to the several Statutes now in Force  
concerning Bankrupts; and also upon their Examinati-  
on,



## Bankrupt.

on, fully and truly discover all their Effects and Estate Real and Personal, and how, and to whom, and for what Consideration, and when they disposed of their said Estate, (and all Books, Papers, and Writings relating thereunto) or to which they were any way entitled, or any in Trust for them, or to their Use at any time before or since the said Commission, or whereby they or their Family may have any Advantage whatsoever; and also upon such Examination, deliver up to the said Commissioners, all their Effects, and all Books, Papers and Writings relating thereunto, as shall be in their Possession or Power (necessary wearing Apparel excepted) then they in case of any Default, or wilful Omission, in not surrendring and submitting to be examined as aforesaid, or if they shall remove, conceal or imbezil, any Part of their Estate or Effects to the Value of twenty Pounds, or any Books of Account, Papers, or Writings relating thereto, with an Intent to defraud their Creditors, (and being thereof lawfully convicted by Indictment or Information) shall be adjudged guilty of Felony without Benefit of Clergy, or of any Statute in relation to Felons, and their Goods and Estate shall go and be divided among their Creditors seeking Relief under such Commission.

And it is further enacted, that upon Certificate under the Hands and Seals of the said Commissioners, or the major Part of them, that such Commission is issued, and such Person or Persons become Bankrupt, it shall be lawful for any of the Judges, or any Justice of the Peace, within *England, Wales*, or Town of *Berwick upon Tweed*, on Application to them for that Purpose made, to grant their Warrant under Hand and Seal, for the apprehending any such Person, and to commit them to the common Gaol of the County where they shall be so apprehended, there to remain until they are removed by Warrant under the Hands and Seals of the said Commissioners, or the major Part of them.

This Act is to be in Force for three Years from the 24th of *June*, 1732. and from thence to the End of the then next Session of Parliament, and no longer.

**Bargain and Sale.** See **Inrolment.**  
**Bark of Trees.** See **Leather.**

## Barretry.

**A** Common Barretor is he who is either a common Barretor, who. Mover, Stirrer up, or Maintainer of Suits in Law, in any Court, or Quarrels in the Country, or any common Disturber of the Peace.

And as he may be bound to his Good Behaviour; so he may be indicted at the Assizes or Sessions, and fined. 8 Co. 36, 37.

One or two Causes make not a Barretor, but it must be a common Course and Habit to make him punishable.

If an Indictment for Barretry concludes *contra formam Statuti*, 'tis not void, tho' there is no Statute which makes it an Offence; for the Act 34 Ed. 3. c. 1. gives the Justices of Peace Power to punish a Barretor, but doth not create the Offence, for it was an Offence at Common Law.

An Indictment was *communis Barreſtor*, where it should have been *Barreſtator*, and quash'd for that. 20 Jac. 1. *Alport's Case*. Barretor instead of Barreſtator.

This Offence being mix'd, the Justices cannot punish it by Virtue of their Commission in general, but in respect of the Clause therein to punish Felonies, &c. And therefore upon a *Certiorari*, such an Indictment being certified *capta coram, &c. Jusſic' Dom' Regis ad pacem*, but (*Nec non ad diversa, &c.*) being left out, for that Cause the Indictment was quash'd. 2 Roll. Rep. 151. Necnon ad diversa, &c. left out in the Indictment and quash'd.

A Feme Covert can't be guilty of Barretry. 2 Roll. Rep. 37. Suing in another Man's Name unknown to him, is a Sort of Barretry; so is lending small Sums on several Bonds, and keeping the Bonds and putting them in Suit after Money is paid. *Dalt.* 39. Feme Covert not indictable for Barretry.

T. was indicted at the Sessions as a Promoter of Suits & *communis vicinorum oppressor*, &c. and Judgment given against him at Sessions, and he was fined 200*l.* He brought a Writ of Error, and because the Word *Barreſtator* was not used in the Indictment, which the Court said was a Word of Art in this Case, the Judgment was reversed; but the Court bound him to his good Behaviour, and directed a new Indictment to be brought with the Word *Barreſtator*. *Pasch.* 18 Car. 2. B. R. 1 *Siderfin* 282. pl. 13. *The King against Hardwick.* Mich. 22 Car. 2. B. R. 1 *Vent. Rep.* p. 104. *The King against Ledgingham.* S. P. 1 *Mod. Rep.* p. 71. S. C. *Levinz Rep.* 1 pt. p. 239. S. C. *Raymond* p. 205. S. C. Barreſtator left out in the Indictment and quash'd. 2 Keeble p. 24. pl. 51. & p. 42. pl. 84. S. C. 1 *Mod.* p. 228. Com-

*Communis Oppressor* is too general : Tho' Mr. *Nelson* tells us it hath lately been ruled otherwise ; for an Indictment against the Defendant, for that he is *Quotidianus perturbator pacis*, was not quashed (as he says) tho' the same Exception was taken to it, viz. The Omission of the Word *Barretor*. *Hill. 8. Will. B. R. Rex v. Gregory. Nelson p. 76.*

It was formerly held, That it was not necessary to set forth in what Place the Offender was a Barretor ; because a Man who is guilty of this Offence is a Common Barretor every where : But of late 'tis ruled otherwise ; for if it is traversed, and no Place alledged in the Indictment, there cannot be any *Venire facias* awarded to try the Fact.

*W. T.* was indicted at *Oxford Sessions* as a common Barretor ; and the Indictment was quash'd, because no Time was alledg'd when he was a common Barretor, and stirred up Strifes, though the Indictment was, he is a common Barretor. *Benloe's Rep. 133. Walter Thomas's Case.*

*N. B.* The Words *contra pacem* must not be omitted in the Indictment.

### An Indictment against a Barretor.

Essex, ss. **T**HE Jurors, &c. do present, That A. B. of (such a Place) in the County aforesaid, (at such a Day and Year) at L. in the said County, was and now is a Common Barretor and a continual Disturber of the Peace of our said Sovereign Lord the King, and also on the Day in the Year, and at the Place aforesaid was and now is a common and turbulent Slanderer, Brawler, Fighter and Sower of Discord between his Neighbours, so that he stirred up and procured divers Suits and Controversies then and there and elsewhere in the said County, between divers Subjects of our said Sovereign Lord the King, in great Contempt of our said Sovereign Lord the King, and to the ill Example of other Delinquents, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

This Indictment is general, and 'tis almost impossible to make any Defence to it, without a Rule of Court to help the Defendant, viz. That the Prosecutor shall give him Notice, some Time before the Trial, what Suits he intends to give in Evidence ; for otherwise he cannot be prepared



prepared to defend himself against that general Allegation,  
viz. *Diversas lites movet.* 5 Mod. 18.

# Bastardy.

**A** Bastard is one born out of lawful Wedlock; as if a Man marry a second Wife, the first still living, and the second Wife have Issue, that Issue is a Bastard: Children which a Woman has before a Divorce *a vinculo matrimonii*, or after a Separation by Divorce *a mensa & thoro* are likewise Bastards, unless it can be proved that the Husband had Access to her; but if a Man marry a Woman, big with Child by another who was not her Husband, the Child in such Case is no Bastard; and if a Woman part from her Husband by Consent, or elope with a Stranger, and hath a Child by him, if the Husband be within the four Seas, and under no apparent Impossibility of Procreation, such Child is Legitimate and shall inherit. *Roll. Abridgm.* 358, &c.

Bastardy is an Offence against both the Common Law, and the Law Spiritual, and may be punished in both Courts; and at Common Law, the Person offending may be bound to the good Behaviour by one Justice as he is *conservator pacis*.

Bastardy an Offence both against the Common Law and the Spiritual Law.

By the Statute of 18 *Eliz. cap. 3.* it was enacted, that Two Justices of the Peace, whereof one to be of the *Quorum* in or next unto the Limits where the Parish Church is, within which Parish such Bastard shall be born, upon Examination of the Cause and Circumstance shall and may by their Discretion take Order as well for the Punishment of the Mother and reputed Father, as for the Relief of the Parish, and for the Keeping the Child by charging the Mother or reputed Father weekly or otherwise; and for Non-performance to commit them to Gaol, there to remain till he or she shall give sufficient Security to perform the said Order, or else personally to appear at the (next

If more than two, so one to be of the *Quorum*, tis good. *Salk.* 447.

(a) General Quarter-Sessions of the Peace to be holden in that County (a) It was resolved that these Words

next General Quarter-Sessions shall be intended at the next Quarter-Sessions of that Part of the County where it was made, and not the next Sessions of the County, because that would be mischievous in many Counties; but in this Case it was further resolved, that when Orders about Bastards made by the Justices are void in Part and against Law, yet they may be confirmed as to that Part which is good. *Trin.* 15 *Car.* 2. 1 *Sid.* 149. The King against

gainst Coy-  
stem. — And  
Note, that by  
this Act the  
two first and  
next Justices  
have no Power  
to commit any

one for not performing their Order, but they are to bind him over to appear at the next Quarter-Sessions, and may commit for want of Sureties, and the Recognisance ought to be in the Disjunctive, viz. to perform the Order then made, or to appear at the next Quarter-Sessions, and to abide the Order.  
2 Bulst. 341, 342. Salk. 482.

If the Sessions proceed against a Father of a Bastard, they have no Power to commit, but must proceed on their Recognisance, unless they proceed on the Statute hereafter.  
3 Car. 1. cap. Sect. 17. 1 Salk. 122.

They cannot  
proceed upon  
this Statute un-  
less she be con-  
victed of, and  
punished for  
the first Of-  
fence.

2 Bulst. 349.

By an Act of 7 Ja. 1. cap. 4. Sect. 7. Every lewd Woman, who after that Session should have a Bastard, which might be chargeable to the Parish, the Justices might commit her to the House of Correction, there to be punished and set on Work for a Year; and upon the second Offence to be committed till she had found Sureties for her good Behaviour.

By the Act of 3 Car. 1. cap. 4. Sect. 15. So much of the Act for the Setting the Poor to Work, to avoid Idleness, as concerns Bastards, with this, that all Justices of the Peace within their several Limits and Precincts, and at their several Sessions may do and execute all Things concerning that Part of the said Statute (that by Justices of the Peace in their several Counties are by the said Statute limited to be done) are continued. Pasch. 13 Car. 1. was resolved by the whole Court that before this Act the Justices at the Sessions had no Authority to meddle in the Case of Bastardy till the two next Justices, according to the above Statute 18 Eliz. had made an Order therein, and that the Justices at the Sessions have Power and Authority to make an original Order in the Case of Bastardy.  
1 Salk. 122.

Church-war-  
dens may seise  
Goods of Fa-  
ther and Mo-  
ther towards  
the Child's  
Maintenance.

Where a Bastard Child is born it is a Parishioner, and the Church-wardens and Overseers of the Poor of the Parish may seise Goods, and receive Rents of the Lands of the reputed Father and Mother sufficient to discharge the Parish; but then it must be by Order of the two Justices, and the Order must be confirmed in Sessions. 14 Car. 1. c. 12.

But though by this Statute the Church-wardens and Overseers of the Poor of any Parish, where a Bastard Child is born, may seise so much of the Goods, and receive so much of the Rents of the Lands of the reputed Father and Mother as shall be ordered by two Justices; yet they cannot sell the Goods by Virtue of the Order of the two Justices: The Sessions must make an Order for that Purpose.

The above Statute 14 Car. 2. extended only to Bastard Children, but by the Stat. 5 Geo. 1. c. 8. it is enacted, that the Church-wardens or Overseers of the Poor of such Parish where any Man shall leave his Wife or Child, or Children upon Application to two Justices, and by their Warrant or Order may seise and take so much of his Goods and Chattels, and receive so much of the annual Rents and Profits of his Lands and Tenements as they shall order, for or towards the Discharge of the Parish where such Wife, Child, or Children shall be left, for the bringing up and providing for them: Which Order being confirmed by the next Quarter-Sessions, that the Court may make an Order to the Church-wardens or Overseers of the Poor of such Parish, to dispose of such Goods and Chattels by Sale or otherwise, as the Court shall think fit for the Purposes aforesaid; and likewise to receive the Rents and Profits of the Lands, &c. or so much thereof as the Sessions shall order the Church-wardens, &c. to be accountable to the Sessions for all the Money they shall receive by Virtue of this Act.

Whatever was deficient or misconceived upon the Statute of Queen Eliz. as to the Order to be taken concerning Bastard Children by Justices of the Peace, &c. we have now a new Statute to assist them in their Duty, viz.

The Statute 6 Geo. 2. c. 31. *for the Relief of Parishes, and other Places from such Charges as may arise from Bastard Children born within the same*, enacts, that if any single Woman shall be delivered of a Bastard Child, which shall be chargeable, or likely to become chargeable to any Parish or extraparochial Place, or shall declare herself to be with Child, and that such Child is likely to be born a Bastard, and to be chargeable, &c. and shall in either of such Cases, in an Examination to be taken in Writing upon Oath before one or more Justice or Justices, &c. charge any Person with having gotten her with Child, it shall be lawful for such Justice, &c. upon Application made by the Overseers of the Poor, or one of them, or by any substantial Householder of such extraparochial Place, to issue out a Warrant or Warrants for apprehending the Person charged, and for bringing him before such Justice, &c. or any other of such County, &c. who are by this Statute autho-

Parish Officers may seise Goods, and receive Rents of reputed Parents of Bastards.

So of a Man leaving his Wife and Family to the Parish.



authorised and required to commit the Person so charged to the common Gaol, or House of Correction, &c. unless he shall give Security to indemnify such Place or Parish, or shall enter into a Recognisance with sufficient Surety, upon Condition to appear at the next General Quarter-Sessions, or General Sessions, &c. and to abide and perform such Order or Orders as shall be made in Pursuance of the Act 18 *Eliz.*

Provided, that if the Woman so charging any Person shall happen to die, or be married, before she shall be delivered, or if she shall miscarry of such Child, or shall appear not to have been with Child at the Time of her Examination, in any of these Cases, such Person shall be discharged from his Recognisance at the next General Quarter-Sessions, or General Sessions, &c. or immediately released out of Custody, by Warrant under the Hand and Seal of one or more Justices, &c. residing in or near the Limits where such Parish or Place shall lie.

Provided also, that upon Application made by any Person committed by Virtue of this Act, or by any Person on his Behalf, to any Justice or Justices residing in or near the Limits, &c. such Justice, &c. is authorised and required to summon the Overseers of the Poor, or such substantial Householder, to appear before him at a Time and Place mentioned in the Summons, to shew Cause why such Person should not be discharged; and if no Order shall appear to have been made pursuant to the Act 18 *Eliz.* within six Weeks after such Woman shall have been delivered, such Justice shall discharge him from his Imprisonment.

Provided, that it shall not be lawful for any Justice to send for any Woman before she shall be delivered, and one Month after, in order to be examined concerning her Pregnancy, or to compel her to answer any Questions.

If the two Justices according to the Act of 18 of *Eliz.* cannot agree in making their Order, then it may be referred to the next Sessions to be examin'd; and it may be again heard before the Justices, with the Direction of the Court.

'Tis necessary in the Order of the two Justices to set forth, that the putative Father of the Bastard was summoned to appear, for what Cause.

The putative Father may be charged to pay a Sum in Gross. *The King ver. Glegg, Mich. 7 G. 1.*

In the making a good Order, the following Things are to be observed.

Jones 330. 1  
Mod. 287. Styl.  
475. But now  
by 3 Car. 1. c.  
4 the Justices  
in Sessions have

That it be made by two Justices (*Quorum unus*;) that such Justices do reside nearest the Parish to be relieved; Power originally to make an Order therein. c. 11. Dalt. p. 40.

that

that it be made at a private Meeting, and not at Sessions, that it be express'd to be made concerning a Bastard likely to be, or that is chargeable to the Parish; for the putative Father to provide for it so long as it shall be chargeable to the Parish. 1 *Mod.* 20. The Place of Birth must be set forth, to prove the Justices Jurisdiction, and it must appear to be born in the Parish to which Relief is ordered; it must directly affirm who is the reputed Father; and it must be made for the Relief of the Parish in part, or in all, and to relieve the Child by a Weekly Maintenance. *Style* 154, 368. *Vent.* 37. *Syd.* 363. 1 *Syd.* 222.

The putative Father may appeal to the next Sessions if he see Cause, and upon the Appeal the Sessions are either to affirm or quash the Order made by the two Justices, for they cannot make a new one; neither can any other Justices, or Sessions, make a new one after Reversal, and the Party charged by such Reversal is acquitted. 2 *Bulst.* 341. 1 *Vent.* 59. *Mich.* 3 *Jac.* 1. *B. R.* *Hamond's Case.* *Mich.* 6 *Car.* 1. *B. R.* *Smith's Case.*

On serving the Order, the Father may give Security to the Church-wardens, &c. to indemnify the Parish from all Charges and Expences arising by reason of the Birth or Maintenance, &c. of the Child; and when such Security is given the Sessions have no further Power, for the Bond must be put in Suit if the Condition be not performed: But if the reputed Father refuse to give such Security, or to comply with the Order, and will bring an Appeal against it at the next Sessions, then he must enter into a Recognizance for his Appearance at the next Sessions to have the Matter determined. And on his refusing to give Security as aforesaid, and to enter into such Recognizance for his Appearance as aforesaid, the two Justices who made the Order may commit him, without Bail or Mainprize. 18 *Eliz.* c. 32. *Bulst.* 341, 342.

The two Justices may inflict a Corporal Punishment upon the reputed Father, by Virtue of Stat. 18 *Eliz.* But this is very rarely done unless he is so very Poor, as not to be able to indemnify the Parish.

The Justices may commit to the House of Correction Women who have Bastards likely to be chargeable to the Parish, there to be punished and set on Work (but not until delivered, and the Child alive) for a Year, by Stat. 7 *Jac.* 1. c. 4. But if the Woman will discharge the Parish, she may not be punished by this Act, though by 18 *Eliz.* she may be punished by Whipping, as the reputed Father may be.

They have the same Authority given them as was given the two Justices by 18 *Eliz.* c. 3.

On putative Father's giving Security to the Parish, Sessions have no further Power.

If he refuse to enter into Recognizance, the Justices may commit him.

Or inflict a Corporal Punishment.

May commit the Mother to the House of Correction.

If Mother expose the Child abroad, 'tis Murder.

If the Father of a Bastard dies poor, the Mother must provide for the Child, if able; but if not, the Town where she was last settled. And if a Harlot will take the Child whereof she is delivered, and suffer it to lie abroad, whereby Vermin destroy it, this is Murder. 18 *Eliz. c. 3. 2 Bulst. 250. 21 Jac. 1. cap. 27. Crompton 24. 7 Jac. cap. 6.*

A Bastard of one able to keep it, not within 18 *Eliz.*

A Bastard of a Person able and willing to keep it, and not likely to become chargeable to the Parish, is not within the Stat. 18 *Eliz. Cro. Car. 436.*

And an Indictment lies for Conspiring to charge one with a Bastard-Child, for a Man is thereby disgrac'd. 1 *Vent. 305. 1 Syd. 154.*

Order of Sessions quash'd, where.

A Motion was made at the Quarter-Sessions to quash an Order made, that one should keep his reputed Child, because he had kept him heretofore. But it not appearing by the Order, either that he was his Bastard, or his lawfully begotten Child, the Order was quash'd. *Styl. 154.*

A Man once adjudg'd to be the reputed Father by the Sessions, can't be excus'd elsewhere.

A Man once adjudg'd by Justices of the Peace in the Sessions, to be the reputed Father of a Bastard-Child, cannot be excus'd in the Spiritual Court, or elsewhere, by reason 'tis by Authority of the Statute. *Cro. Jac. 624. Webb ver. Cook.*

A Child removed by an illegal Order, which is after revers'd, must go back to the first Parish.

A Woman big with Child was by an Order of two Justices removed from one Parish to another, and there she was brought to Bed, the Parish to which she was removed appeal'd at the next Sessions, and the Order was revers'd: Afterwards an Order was obtained from two Justices to send the Child back: That Parish appeal'd; but the Order was confirm'd. At last it was remov'd into *B. R.* and *Holt* Chief Justice gave his Opinion, that the Birth at the last Parish did not settle the Child there, by reason it was under an illegal Order, which Order being revers'd, the Matter is no more than that they procured the Woman to go thither. *Corsham* Parish against *Westbury*, *Trin. 3 Ann. Salk. 121, 532.*

If by Practice and Design a Child be born in a Parish, the Parish where the Practice was, shall keep the Child. 2 *Bulst. 341.*

A Child born 9 Months and 9 Days after Father's Death no Bastard.

A Child born nine Months and nine Days after the Death of her Father, no Bastard. 1 *Roll. 358. Noy 142. 2 Cro. 541.*

Yet *Co. L. 123.* says, that a Child born Eleven Days after Forty Weeks after its Father's Death, shall not be judged a lawful Child; and so it seems of a Child born above Forty Weeks after a Woman has sworn a Man had carnal Knowledge of her. *Dalt. 41.*



If there be an unlawful Marriage, as between Brother and Sister, and they have Issue, and either of them dieth before any Divorce had between them, the Issue cannot be Bastards. 1 *Brown* 42. 21 *Ed.* 3. 31. The Examination of the Woman on Oath, put in Writing by the Justice, is a sufficient Conviction to issue a Warrant to apprehend the reputed Father, and oblige him to give Security, &c. 18 *Eliz.* c. 3.

Issue can't be Bastards after Parents Death.

Woman's Oath in Writing sufficient to issue a Warrant.

*A.* was ordered by two Justices to keep a Bastard-Child; from which Order he appeal'd to the Quarter-Sessions, where the Order was repeal'd, and he discharg'd. Afterwards, at another Quarter-Sessions it was ordered, That he should be the reputed Father, and should keep the Child, and if he would not, he should be committed, which he was accordingly; all which Matter was returned into *B. R.* and the whole Court were of Opinion, that the Order of the first Sessions was conclusive, and the Order of the last Sessions was merely void. And it was held, that the Stat. 3 *Car.* 1. c. 4. doth not aid in this Case, for that Statute is, that if the two next Justices make not a Provision for the Bastard-Child, the Justices at the Quarter-Sessions shall settle an Order for the keeping of the Bastard, as the two next Justices ought; but it doth not give more Power or Authority to one Sessions to alter what was ordered in a former Sessions. *Hill.* 9 *Car.* 1. *Cro. Car.* p. 341, & 351. *Pridgeon's Case*, *Jones's Reports*, p. 330. the very same Point in 13 *Car.* 1. *Bulst.* 2. Part 355. *Wood of Beckford's Case*, 2 *Syd.* 29. 1 *Vent.* 59. 1 *Keeb.* 546. 2 *K.* 604.

The Substance of what is enacted by 3 *Car.* 1. c. 4.

An Order for keeping a Bastard-Child was quash'd, because the Order did not direct how long the Party should keep the Child. *Mich.* 24 *Car.* 1. *B. R.* *Styl.* 154.

So an Order for paying so much Weekly to a Parish, towards keeping of a Bastard-Child, was quash'd, because it did not appear by the Order, that the Child was born in that Parish to which the Money was to be paid. *Styl.* 368.

*H.* was ordered by two Justices to pay 8 *l.* towards keeping a Bastard-Child; but had no Notice of the Order till the Time given him by the Statute to appeal to the Sessions was past. The Court made a Rule, that the next Sessions in *Middlesex* (where the Matter was) should hear the Matter, and make an Order for the Charge or Discharge of *H.* and that should be final. *Pasch.* 19 *Car.* 2. *B. R.* 1 *Syd.* 326. *King ver. Hill.*

When Father had not due Notice to appeal, next Sessions to settle it.

Sessions must not refer the Order back to the two Justices.

An Order made without Complaint of the Parish Officers nor good. Sessions can't commit for not finding Security.

Two Justices make an Order for *R.* to keep a Bastard-Child, who appeal'd to the Sessions, where they vacated the Order, and referr'd it back to the Justices, who do nothing: This was remov'd by *Certiorari*; and the Court resolved, that the Referring back to the Justices by the Quarter-Sessions was not warranted. *Mich. 21 Car. 2. B. R. Vent. 48. Burnet's Case.* But they might have referr'd it back before they had allow'd or disallow'd the Order. *Smith's Case, Mich. 6 Car. 1.*

An Order made without Complaint of the Parish Officers is not good. *Blackerby's Cases 44.*

Two Justices make an Order, from which the Defendant appeal'd to Sessions, who confirmed the Order of the two Justices; and upon the Defendant's not giving Security the Sessions committed him; but objected the Sessions have no such Power. *Trin. 12 Will. 3. King ver. James.* Indeed it is usual in this Case to take the Party's own Recognisance to appear at the next Sessions, and to abide such Order as the Justices should make therein; and therefore the Justices, before they had allowed of the Appeal, should have taken Security. But the Sessions cannot commit for not finding Security. *Regina ver. Chaffs, 2 Ann. 2. Bulstrode 341.*

Two Justices cannot order the reputed Father to give Security for the Performance of their Order before he hath made Default of obeying that Order. *Blackerby's Cases 45.*

If a Woman conceal the Death of her Bastard, and do not prove by one Witness that it was Still-born, it is Murder. *Vid. Stat. 21 Jac. 1. c. 27.*

A Bastard is no Child in the Statute of Wills. *1 Inst. 123.*

Order was, Whereas a certain Woman was brought to Bed of a Female Bastard-Child in *N.* and after dropt it in *S.* *Cur.* You must either name her, or say a Person unknown; and it was quash'd.

In an Order of Bastardy, not said one of the Justices was of the *Quorum*, quash'd. *Queen and Knott, and Queen and Cotton, Pasch. 1712*

In the Order, not said the Child was born in the Parish; and quash'd. *Queen and Casb.*

If Constable suffers one, whom he has apprehended on a Warrant for getting a Bastard Child, to escape, the Justices have no Authority to order the Constable to pay any Money towards keeping the Bastard, though they may the Father or Mother. *Queen and Jeffereys.*

If the Officers are carrying a Person by Order of Removal, and she be delivered on the Road *in transitu*, the Bastard

Bastard shall go with the Mother whither she was going; and if there be an Order made, and before that Order can be served the Bastard is born, it gains no Settlement, but shall be sent with the Mother.

An Order of Bastardy was quash'd, because not said the Child was born in the Parish.

The reputed Grandfather of a Bastard is not to be charged, as in a Case of a legitimate Child. *Black. 59.*

A Bastard was born in one Parish, but taken and kept by the reputed Father in another, and after twenty Years he dies, it is to be kept by the Mother, if able; and if not, by the Father's Parish. *2 Bulst. 250, 293. Black. 52.*

An Order of Maintenance of a Bastard does not determine its Settlement. *Hill. 5 Ann. Black. 70.*

The two Justices cannot make an Order upon the Woman's Complaint only. *Black. 63.*

Where Quarter-Sessions first make an Order in Bastardy, and afterwards the two Justices make one, it is a Nullity. *Black. 51, 52.*

If the two Justices make not a Provision for the Bastard, the Sessions must settle it as the two Justices ought to have done it. *Jones 330.*

An Order to pay such Charge as the Parish had been at, and did not say that the Child was likely to be chargeably, and yet held good. *1 Vent. 37.*

Sessions may order a Payment notwithstanding the Child's Death. But ill, it not appearing the Child was born in the Parish to which the Money was order'd to be paid. *Style 14, 368.*

A Man being adjudg'd to be the putative Father by Justices of Peace at the Sessions, which is by Authority of the Statute Law, it cannot be impeached in the Spiritual Court, nor elsewhere. *Cro. Jac. 625. 2 Sid. 29. 1 Vent. 59. 1 Keb. 546.*

The Parish where a Bastard is born, whose Father cannot be found, must maintain it.

The bare Conspiring to charge one with the Keeping of a Bastard-Child, though the Woman be not with Child, nor there be no Child really, but only a Contrivance to defame the Person, and cheat him of his Money, is a Crime of a very heinous Nature, and indictable. *1 Vent. 304. 1 Lev. 62.*

A Bastard-Child is generally to be settled where it is Bastard settled born; but if it be born in a Parish to which the Mother is where born removed by an Order that is illegal, it will gain no Settlement there. *Salk. 121, 532.*



On Motion to quash an Order of two Justices to remove a Woman and her Bastard-Child from *A.* to *B.* whereas it appeared in the Order that the Child was born at *C.* By *Holt*, Ch. Justice, the Bastard must be kept where born. *Trin. 11 W. 3. B. R. 2 Salk. 485.*

The Father to be in Court on quashing Orders.

And Orders relating to Bastard-Children cannot be quash'd, except the reputed Father be present in Court. *2 Salk. 475.*

By *Hyde*, Ch. Justice, the Justices ought not to commit for not performing their Order of Quarter-Sessions, where they alter the former Order made by the Justices who had first the Examination, for by the second Order the first was made null.

Cases of Bastardy.

It appeared by Proof before two Witnesses, that *Smith* was the reputed Father of a Bastard Child, and the Justices made an Order for Maintenance of the Child, and for Discharge of the Parish, according to Law, and afterwards committed him for not performing the Order. Resolved, The Commitment was void, and that the Justices should have taken Bond of him to appear at next Sessions.

Where there is an Order by two Justices, and the Sessions order a Reference; resolved, The Reference by the Justices at the Sessions, before they had allowed or disallow'd the first Order, was illegal.

And so upon the Statute 43 *Eliz. cap. 4.* for charitable Uses, if the Commissioners make an Order or Decree in the Case, and upon Appeal to the Lord Keeper, and Exceptions put in, if upon that the Decree made by the Commissioners be confirm'd by the Lord Keeper, this Decree is by this made to be final, and no subsequent Appeal to be admitted.

The

The King *against* Barebaker *in the Court of King's Bench.*

BY an Order of two Justices of the Peace, that the Defendant *Barebaker* should pay a certain Sum of Money weekly till the Bastard-Child should attain the Age of Fourteen Years: It was held by the Court, that the Order was nought, because that the Justices have no Power but to save and indemnify the Parish, and that is only to oblige the Defendant *Barebaker* to maintain the Child, as long as it is, or may be chargeable to the Parish.

Upon a Special Order of the Sessions the Question was, That if the Husband be *ultra mare*, and during that Time, the Wife be got with Child, whether the Child be a Bastard within the Statute of 18 *Eliz. cap. 3.* It was by *Holt*, Ch. Justice said, That if the Husband was out of the four Seas during the whole Time of the Wife's going with Child, in that Case the Child is a Bastard; but if the Husband were here at all within that Time, it is Legitimate and no Bastard. Besides, it did not appear by the Order, that the Husband was absent all the Time: The Order was for these Reasons quash'd.

The Defendant *Weston* being adjudg'd the Father of a Bastard-Child by two Justices of the Peace, several Exceptions were taken to the said Order: First, That by the Order he was to pay so much weekly to the Overseers of the Poor of the Parish, but that was over-ruled; for as before the Institution of the Overseers, the Justices might, and often did in these Cases, order the Money to be paid to some of the Inhabitants; so now they may to the Overseers

[H 3 a]

who

who have the Care of the Poor. The second Exception was, that it is said in the Order, *We two of her Majesty's Justices of the Peace doth adjudge*, &c. which is the *Singular* Number, instead of *do*, the *Plural*; and 1 Cro. Rep. 489. was cited to make this Exception good; whereupon the Order was quash'd.

This Cause came into the *K. B.* by *Habeas Corpus*; and the Case was, That *Weston* the Defendant had appeal'd to the Sessions where the Order was confirm'd, and he was committed for not paying the Money order'd; and Mr. *King* (afterwards Lord Chancellor) took this Exception to the Return of the *Habeas Corpus*, viz. That the Sessions should have proceeded against him upon his Recognizance.

Upon a Special Order of Sessions, wherein the Fact was stated for the Opinion of this Court, the Case was thus, That one *A.* was divorc'd *a mensa & thoro*, and afterwards his Wife lived with one *Ellis* in Adultery, in the Parish of *St. Giles*, and had several Children by her, and they all went by the Name of *Ellis*, and registred in the Parish Book as his. It was held by the Court, That when a Woman is separated from her Husband by such a Divorce, the Children, that she shall have during that Separation, are Bastards; for we will intend a due Obedience to the Sentence, unless the contrary plainly appears: But if Baron and Feme, without Sentence, shall part and live separate, the Children in that Case shall be taken to be Legitimate, and so deem'd till the contrary be proved, for Access shall be intended: But if a Special Verdict find the Man had no Access, it is a Bastard; and so was the Opinion of the Court.



In the Case between *Budworth* and *Damply*, *Hill. 5 Ann.* it was held, 1st, That an Order made upon the Overseers of any Parish by two Justices, for raising a Sum towards the Maintenance of a Bastard, or poor Person, does not determine the Settlement of that Person in that Parish; for the Right of Settlement is not contested, but presumed.

2dly, That the Clause in the Stat. 13 & 14 *Car. 2. cap. 12.* which provides, That distinct Townships of large Parishes in the *Northern* Counties shall respectively provide for their Poor, under the Penalty mentioned in the Statute 43 *Eliz. cap. 1.* must be understood with Respect to the Maintenance of poor and impotent Persons, and not with respect to Bastards, who are provided for by other Statutes; but if a Bastard be grown up, and by Accident grow lame or impotent, he shall be relieved as a poor Person within that Statute.

An Order by two Justices for the Maintenance of a Bastard-Child was excepted to by Mr. *Page* (now one of his Majesty's Justices of the King's Bench) because the Defendant *Adam* was upon Sight of the said Order to pay Nine Pounds in one entire Sum, and afterwards so much *per Week*, as therein mentioned. It was held by the Court, that by the Statute the Justices are to take Order for the Relief of the Parish, and keeping of the said Child, by Payment of Money, either weekly or otherwise; and this Sum may be only for indemnifying the Parish for Money laid out before the reputed Father could be found.

A Widow of *Cobham* having two Daughters by her former Husband under the Age of Seven Years, was married to a Man at *Chatham*, but a Parishioner of *St Paul's Shadwel*, and the Man never gain'd any legal Settlement at *Chatham*; the Woman died, and this being refer'd to the two Judges of Assize, they were of Opinion the two Daughters ought to be settled at *Cobham*, notwithstanding *Shadwel* had given a Certificate owning the said Man and his Wife to be their Parishioners: But the chief Reason was, because the two Daughters never had liv'd with their Mother after the second Marriage.

Upon a Motion to quash an Order, the putative Father must be in Court. The Objection was, That the Order did not set forth that the Child was likely to be chargeable; but adjudg'd that it is self-evident that Bastards are likely to be chargeable. 2 *Salk.* 475.

If the Child dies after the Order is made by the two Justices, and before the next Sessions, and no Security be given to perform the Order, then when the Party ap-

pears at Sessions they may order him to pay the Charges upon Proof of serving the Order.

But if Security hath been given, then the Sessions have no further Power; but the Bond must be put in Suit if the Condition is not perform'd.

The Bond must be made to the Church-wardens, &c. and their Successors.

By the Statute 7 Jac. 1. the Justices of Peace may commit lewd Women to the House of Correction, who have Bastards that may be chargeable to the Parish, there to be punish'd and set to work for a Year.

But she is not to be sent to the House of Correction 'till the Child is born, and the Woman well again; and the Child must be living, and chargeable to the Parish.

The Constable willingly or negligently suffering the Father to escape after he is apprehended by a Warrant, one Justice may bind him over to the Sessions, and there he may be order'd to contribute towards the Maintenance of the Child, or may be fined.

So may any Person who shall perswade, procure, or convey away the reputed Father; or who suffers the Mother to escape, or conveys her away.

But this not by Virtue of any of the Statutes made against Bastardy; It is only a discretionary Act in the Justices, which the Conservators had at Common Law.

A Warrant to bring a Woman suspected to be gotten with a Bastard-Child before a Justice of Peace, to be examined thereupon.

To the Constable of the Parish of, &c.

Essex, ss. **W** Hereas Complaint hath been made unto me this present Day, by the Overseers of the Poor, and other credible Inhabitants of your Parish, that J. F. of your said Parish, single Woman, is now with Child of a Child, which when born is likely to be a Bastard, and chargeable to the said Parish: These are therefore in his Majesty's Name, strictly to charge and command you, and every of you, that you, some or one of you do bring the said J. F. before me, or some other of his Majesty's Justices of the Peace of the same County, to be examined touching the Premises, and that you do likewise give Notice

(1.)  
Vide Jones's  
Rep. 330.  
Styl. Rep. 475.  
Jenk. Rep. 47.  
Bullst. Rep. 2.  
Part 341, 342,  
323, 398.  
Moy's Rep. 79.

tice to the several Persons, whose Names are here under-written, that they and every of them are required to appear with the said Woman before me, at my House in, &c. in the Parish aforesaid, on the ——— Day of this Instant May, at Nine of the Clock in the Forenoon, to testify their several Knowledges touching the Premisses, to the End that upon Examination of the said Matter, and the Circumstances thereof, such Order may be taken therein as to Justice doth appertain: Whereof fail not at your Perils. Given under my Hand and Seal, the, &c.

## Examination of a Woman with Child of a Bastard.

*Essex, ff.* The Examination of *M. W.* of, &c. single Woman, taken before me *W. B.* Esq; one of his Majesty's Justices of the Peace for the said County, this First Day of February, Anno Domini, 1714.

**T**HIS Examinant saith, That on or about the Twenty-second Day of August last past, and on or about the Seventh Day of September then following, one *J. E.* (who was then a Fellow Servant with this Examinant, at the House of one *Mr. S. A.* of, &c. in the County aforesaid) did in the House of the said *S. A.* through Wheedlings, and Promises of Marriage, offer to lye with her; and at length, on the Days and at the Place aforesaid, had carnal Knowledge of (or did enter and had carnal Knowledge of) her Body three several Times, whereby she, this Examinant, is now big with Child; and this Examinant further saith, that no other Person besides the said *J. E.* had ever any Knowledge of her Body, and that he the said *J. E.* is the only Father of the said Child.]

A. B.

Jurat' Coram me Die &  
Anno Supradict'.

C. G. (and Seal.)

A Warrant



## A Warrant to apprehend the reputed Father of a Bastard.

18 Eliz. c. 3.

Essex, *ff.* **W** Hereas upon the Examination of M. W. of, &c. single Woman, this Day taken upon Oath before me, it appears that she is now with Child of a Bastard, begot on her Body by one J. E. of your Parish; and whereas the said Bastard, when born, may be chargeable to the Parish of, &c. These are therefore in his Majesty's Name to command you to apprehend the said J. E. if he be within your Parish, and to bring him before me, or some other Justice of the Peace for this County, to answer what is laid to his Charge as aforesaid; and that you do require the said J. E. to bring with him sufficient Sureties to enter into Recognisance for his Appearance at the next Sessions, according to the Direction of the Acts of Parliament in that Case made. Given, &c.

## Condition of the Recognisance for the Appearance of the reputed Father at the Sessions.

18 Eliz.

**T** HE Condition of this Recognisance is such, That whereas the above-bound J. E. upon the Examination of M. W. of, &c. taken before, &c. is charged with being the Father of a Bastard-Child, whereof she the said M. W. now goeth. If therefore the said J. E. shall personally be and appear before his Majesty's Justices of the Peace, at their next General Quarter-Sessions of the Peace, to be holden at, &c. on the Day, &c. for the said County of, &c. then and there to submit to what shall be enjoined by the said Court, concerning the said Premises; and in the mean Time shall be of the Good Behaviour; That then, &c. or else, &c.

A Mittimus

A Mittimus on his refusing to give such Recognisance.

Essex, ff. **W** Hereas M. W. of, &c. upon her Examination taken on Oath before, &c. on, &c. did charge J. E. of, &c. with being the Father of a Bastard-Child, whereof she was then, and now is big: And whereas by Virtue of my Warrant, bearing Date, &c. directed to the Constable of the Parish of, &c. the said J. E. was taken up and brought before me to answer the Premises, but he hath refused to enter into a Recognisance with Sureties for his Appearance at the next Quarter-Sessions, to be held for this County, and to give Security for the Maintenance of the Child when born, as the Law in such Cases directs: These are therefore in his Majesty's Name, to command you the said Constable, to convey the said J. E. safely to the common Gaol, and to deliver him to the Keeper thereof: Hereby requiring you the said Keeper, to receive the said J. E. into your Custody, and him safely to keep in your common Gaol aforesaid, till he shall be discharged by due Course of Law. Hereof fail not. Given, &c.

A Warrant to bring the reputed Father and Mother, and Witnesses before the Justices for Examination, before they make their Order.

Essex, ff. **W** Hereas M. W. of, &c. hath lately been 18 Eliz. delivered of a Bastard-Child, which is now living, and likely to be chargeable to the Parish of, &c. aforesaid; And whereas the said M. W. on her Examination bearing Date, &c. taken on Oath by W. B. Esq; one of his Majesty's Justices of the Peace for this County, hath declared that J. E. of your Parish is the Father of the said Bastard-Child: These are therefore in his Majesty's Name to command you to bring the said J. E. before us, on, &c. at, &c. to be examin'd concerning the Premises: And you are hereby required to give Notice to the said M. W. to appear before us at the Time and Place aforesaid; and that you do bring with you A. B. C. D. &c. then and there to testify what they know relating to the Premises, to the End such Order may be made for the Maintenance of the said Bastard, and for the indemnifying the said Parish of, &c. of and from the same, as the Statute directs. Given, &c. The

## The Order of two Justices for the Maintenance of a Bastard-Child.

13 Eliz.

Essex, *ff.* **W** Hereas, on or about, &c. M. W. of, &c. was delivered of a Bastard-Child in the said Parish of, &c. which is now living, and likely to become chargeable to the said Parish of, &c. And whereas upon due Examination of the Premises, it appears that J. E. of, &c. is the Father of the said Bastard-Child. Now we A. B. of, &c. Esq; and C. D. of, &c. Esq; two of his Majesty's Justices of the Peace for the County aforesaid, and living nearest to the said Parish of, &c. of any in the said County, for the Relief of the said Parish, of, &c. and for the Maintenance of the said Bastard-Child, do this Day, &c. according to the Statutes in that Case made and provided, order the said J. E. (which we adjudge to be the Father of the said Bastard) to pay weekly, and every Week, from the Time of the Birth of the said Child, and so long as he shall be chargeable to the said Parish of, &c. unto the Church-wardens or Overseers of the Poor of the said Parish, &c. for the Time being, the Sum of 1s. and 6d. for and towards the Maintenance of the said Child. And we do hereby further Order that the said M. W. shall pay weekly, and every Week, for so long Time as the said Child shall be chargeable to the said Parish of, &c. and he shall not keep the same, the Sum of 1s. to the Church-wardens or Overseers of the Poor of the said Parish for the Time being, for the further Maintenance of the said Child. In Witness, &c.

To this Order might be added a Mittimus to send the Mother to the House of Correction, especially if she be not order'd to pay a weekly Sum towards Maintenance of the Child.

A Warrant to be added at the Foot of the preceding Order, for giving Notice thereof to the reputed Father, &c.

**T**HESE are in his Majesty's Name to command you, or some of you, with all convenient Speed, to give Notice of the Order above, unto the Mother, and the reputed Father therein mentioned, to the End they and every of them may the better observe and perform the same.

An



An Order of Bastardy under the Hands of more than two Justices, is good, (if one of them be of the *Quorum*) for the Statute is not restrictive to two, but there must be two at the least. *Salkeld's Rep.* 477. And Orders relating to Bastards can't be quash'd, unless the reputed Father be present in Court. 2 *Salk.* 475.

## The Form of Commitment for not obeying the Justice's Order, &c.

Essex, *J.* **W** Hereas by an Order made and subscribed Two Justices by us, on the 7th Day of October last, *Quorum unus.* concerning a Female Bastard-Child, lately born of the Body of A. P. a single Woman, in the Parish of H. in the County aforesaid, and chargeable to the said Parish, We have adjudged I. L. of, &c. to be the reputed Father of the said Bastard-Child, according to the Form of the Statute in that Case made and provided; and amongst other Things in the said Order contained, We have order'd that the said J. L. shall Weekly pay, or cause to be paid to the Church-wardens or Overseers, of the Poor of the Parish of, &c. the Sum of Two Shillings for the Maintenance of the said Child; and shall likewise pay unto them the Sum of Four Pounds within three Months after the said Child shall attain her Age of twelve Years, if she shall so long be chargeable to the said Parish, to put her to be an Apprentice. And whereas it hath been duly proved before us, that the said J. L. had personal Notice thereof, but hath not hitherto performed the same, or given Security so to do, or entred into a Recognizance to appear at the next Quarter-Sessions: These are therefore in His Majesty's Name to Command you to apprehend the said J. L. and to deliver him to the Keeper of the Gaol aforesaid, to be by him kept therein without Bail or Mainprize, except he shall give sufficient Security to perform the said Order or enter into a Recognizance personally to appear at the next General Quarter-Sessions of the Peace, to be holden for the East Part of the said County of Essex, to abide such Order as the Court shall there take concerning the Premises, if any such Order shall be then made; and if not, then to abide and perform the Order already made, as aforesaid; Commanding also you the aforesaid Keeper of the said Gaol, to receive the said J. L. into your Custody, and him safely to keep, according to the Purport of this Precept. Given under our Hands and Seals this 10th Day of October.

## Bastardy.

If the Sessions proceed against a Father of a Bastard-Child, on the 18th *Eliz.* it has no Power to commit him, but to proceed on his Recognizance; but if on the 3d *Car. 1.* the Sessions may make a Commitment, as the two Justices might have done; that is, unless the Party put in Security to perform the Order, or to appear at the next Sessions, &c. *Trin. 4 Ann. B. R. 1 Salk. 122.*

Condition of a Recognizance (after the Order made) for the reputed Father's Appearance at Sessions to appeal to the said Order.

**T**HE Condition of this Recognizance is such, That if the above-bound J. E. do and shall personally appear at the next General Quarter-Sessions of the Peace, to be holden at, &c. on, &c. for the said County of, &c. and then and there abide such Determination as shall be made by the Court, concerning a Bastard-Child lately born of the Body of M. W. in the Parish, of, &c. whereof he the said J. E. is charged to be the Father, if any such shall be then made; and in Default thereof, if the said J. E. do and shall perform the Order therein already made by, &c. then, &c.

Condition of a Bond to discharge the Parish of a Bastard-Child.

*Josephum E. de, &c. &c. teneri, &c.  
Ed'ro F. & Georgio H. Eccles. Guardian  
ac Supervisor' Pauperum de Paroch. A.  
in Com. &c. Administrator', Successor',  
vel Assign' suis, &c.*

**W**Hereas M. W. of, &c. before W. B. Esq; one of His Majesty's Justices of the Peace for the County of, &c. aforesaid, hath sworn that she is great with Child; or the said M. W. hath lately been deliver'd of a Bastard-Child) and that the abovebounden J. E. is the Father of such Child, or Children: Now the Condition of this Obligation is such, That if the said J. E. and the above-bound A. B. and C. D. or either or any of them, their, or either, or any of their Heirs, Executors, or Administrators, do and shall from Time to Time, and at all Times hereafter, fully and clearly acquit, exonerate, and discharge, or otherwise well and sufficiently

ciently save and keep harmless, and indemnified, as well the above named E. F. and G. H. Church-warden and Overseer of the Poor of the Parish of, &c. aforesaid, and their Successors for the Time being, and every of them, as also all the Inhabitants and Parishioners of the said Parish of, &c. which now are, or hereafter shall be for the Time being, and every of them, of and from all and all manner of Expences, Damages, Costs and Charges whatsoever, which shall or may at any time hereafter arise, happen, come, grow, or be imposed upon them, or either or any of them, for or by reason, or means of the said M. W.'s being now great with Child, as aforesaid; or for or by reason, or means of the Birth, Maintenance, Education, and bringing up such Child or Children that she the said M. W. now goeth with; and of and from all other Suits, Troubles, Charges, Damages and Demands whatsoever, touching and concerning the same; Then, &c. or else, &c.

An Order for the Relief of the Parish out of the Estate of the reputed Father.

Essex, J. **W** Hereas it appeareth unto us, upon the Complaint of the Church-Wardens and Overseers of the Poor of the Parish of, &c. that J. L. the reputed Father of a Bastard-Child, lately born in the said Parish, is departed from his usual Place of Abode, and hath left the said Child upon the Charge of the aforesaid Parish, though he hath a sufficient Estate to discharge and indemnify the same: These are therefore to require you to seize and take so much of the Goods and Chattels of the said J. L. and to receive so much of his Rents Yearly issuing out of his Lands as will amount unto the Sum of, &c. which we do hereby appoint you to receive, for and towards the Discharge of the said Parish, according to the Form of the Statute in that Case made and provided. Given under our Hands and Seals, &c.

Two Justices,  
Quorum unus.  
14 Car. 2. c. 12.

A Warrant for punishing the reputed Father of a Bastard-Child.

Essex, J. **W** Hereas M. W. of, &c. hath lately been deliver'd of a Bastard-Child within the Parish of, &c. which Child is now living and chargeable to the said Parish of, &c. And whereas upon the Examination of the said M. W. taken by, &c. she the said M. W. hath sworn, that J. E. of your Parish begot the said Child on her Body; and whereas I am credibly inform'd that the said

i. Jac. 1.



*said J. E. takes no care to maintain the said Child, or to discharge the Parish therefrom; These are therefore in His Majesty's Name to require you to strip, or cause to be stripped, the said J. E. naked from the Middle upwards, and to bind him to the common Whipping-Post in your Parish, and there whip, or cause him to be publickly whipp'd in such manner as is usual in such Cases. Given, &c.*

### A Mittimus of the Mother of a Bastard to the House of Correction.

Two next Justices, Quorum unus.

7 Jac. c. 4. By this Precedent you may see that she is not to be sent to the House of Correction till the Child is born, and the Woman well again, and that the Child must be living and chargeable to the Parish.

Essex, ff. **W** Hereas A. P. of, &c. hath lately been deliver'd in the said Parish of a Female Bastard-Child, yet living and chargeable to the said Parish, and likely so to continue: These are therefore to command you the said Constable, to apprehend the said A. P. and her safely to convey to the House of Correction aforesaid, and to deliver her to the Keeper thereof, together with this Precept; Commanding also you, the aforesaid Keeper, to receive the said A. P. into your Custody, and there to punish her, and set her to Work, for and during the Space of one whole Year, next ensuing, according to the Form of the Statute in that Case made and provided; and hereof fail not at your respective Perils. Given under our Hands and Seals, &c.

### A Warrant against the Mother for the second Offence.

Two Justices, Quorum unus.  
7 Jac. c. 4.

Essex, ff. **W** Hereas A. P. of, &c. a lewd Woman, hath been formerly deliver'd of a Bastard-Child, in the Parish of &c. born of her Body out of lawful Matrimony, and chargeable to the said Parish: And whereas she hath again offended the second Time, in the like Nature: These are therefore to Command you the said Constable, to take the said A. P. and her safely to convey to the aforesaid House of Correction, and there to deliver her to the Keeper thereof, together with this Precept; commanding also you the said Keeper to receive the said A. P. into your Custody, and there to punish her, and set her to Work until she shall give good Security for her good Behaviour, not to offend in the like manner again; and hereof fail not at your respective Peril. Given under our Hands and Seals, &c.

Beggars. See Vagrants.

Behaviour.

## Behaviour. See Peace, &c.

**T**HOSE who are of ill Fame, or common Disturbers of the Peace: Those who are accused, or guilty of any of the Offences herein after specified, may be required by one Justice to enter into Recognizance with Sureties or without them, according to the Discretion of the Justice, to be of the Good Behaviour; and upon Refusal may be committed.

who may be required to find Sureties for their good Behaviour.

Ale-Houses. — Tipplers in them, or Publick-Houses.

Bastardy. { Helpers to convey away the putative Fathers of Bastard-Children.  
 { Reputed Parents of Bastard-Children; but it must be for the Mother's second Offence, after Conviction for the first.

Barretry. — Common Barretors.

A Man was indicted for a common Barretor, and after he was acquitted, he threatned the Witnesses; whereupon he was bound to the Good Behaviour.  
*Latch 5. Toplin's Case.*

Bawdy. { Frequenters of, and Keepers of Bawdy-Houses.  
 { Whore-mongers, and common Whores.

Conspiracy. { One that conspires to take away another's Life, and shall endeavour it.

Cheaters and Cozeners. { By Cards, Dice, or any other Game, or Games whatsoever.

Conies. { Hunting, Killing, or Stealing them, either in Park or Warren.

Drunkard. { Convicted by one Justice, or Head-Officer, or one Witness upon Oath.

Felony. { Acquitted, or Convicted and Pardon'd, if of an ill Fame.

Fish. { Those convicted of stealing of Fish, or destroying the Pond.

Gaming. { Such as frequent Gaming-Houses, and have no visible Means of Livelihood.

Hawks. { Convicted of taking Hawks, or their Eggs out of the Grounds of another Person, may be bound for seven Years.

Hue & Cry.—Raising it without a Cause.

Hunters. —In Parks and Warrens.

Idle Persons. { Living well, and having no visible Way  
to support themselves.

Justice of  
Peace.

{ Those who misbehave themselves before  
him or any other Officer in the Execu-  
tion of Justice : Those who speak con-  
temptible Words of him, or abuse his  
Warrants : Those who delude his Au-  
thority by Complaint without Prosecution.  
A Man may be bound to the Good Beha-  
viour for saying, the Justices of Peace do  
not understand the Statutes.

Libels, or  
Scandalous  
Letters.

{ Writers of them ; Those who contrive,  
procure, or publish Libels, whether True  
or False, either against the Living or  
Dead, by Writings, Words, Pictures, or  
any other Signs of Reproach.

Misbeha-  
viour.

{ Of any Kind whatsoever, which is left to  
the Justices Discretion.

Murderers,  
Manslayers.

{ Such who are like to commit either of  
these Offences.

Night-  
walkers.

{ Those who are suspected to steal, or to com-  
mit any Misdemeanour by Night.

Peace.

{ Those who break it in any manner what-  
soever.

Poison.

{ Mingling it with Corn, and giving it to  
Poultry.

Repute.

—Those of evil Repute.

Riot.

{ Those who are found in the very Act :  
but if the Riot is over, then the Enquiry  
must be by a Jury.

Robbery,  
Suspicion.

{ Those who lie in Wait, or attempt to rob  
another.  
Persons suspected to lie in Wait to rob,  
&c.

Witness.

{ One being a material Witness for the King,  
refusing to give Evidence, &c.

A Woman bound to the Good Behaviour for suborn-  
ing of Witnesses. *Blac.* 153.



## A Warrant for the good Behaviour.

Essex, ss. **W** Hereas I am credibly informed, that S. W. of, &c. is a Person of a lewd Life and Conversation, \* and a common Disturber of the Peace: These are therefore to command you to bring the aforesaid S. W. before me, or some other Justice of the Peace for this County, to answer unto such Matters as shall be objected against him, by T. F. &c. And also that you require him the said S. W. to bring sufficient Sureties for his Good Behaviour, until the next General Quarter-Sessions of the Peace, to be held, &c. And hereof fail not. Given under my Hand and Seal, &c.

\* Here Name  
the Offence.

Upon this Warrant an Officer may break open an House to take the Party. Moor's Reports 606.

## A Recognizance for the Good Behaviour of a Person bound over to the General Quarter-Sessions.

This may be taken without Sureties, if the Justice thinks fit, for 'tis discretionary in him.

Essex, ss. **B**E it Remembered, That A. B. (of such a Place) in the County aforesaid, Labourer, C. D. (of such a Place) in the County aforesaid, Labourer, and E. F. (of such a Place) in the County aforesaid, Labourer, on the third Day of January, in the eighth Year of the Reign of our Sovereign Lord the King, came before us H. I. K. Esquires, two Justices of our said Sovereign Lord the King assigned to keep the Peace in the said County, and in their proper Persons acknowledged themselves to be indebted to our said Sovereign Lord the King, in the Manner and Form following; (that is to say) the said A. B. in twenty Pounds, and the said C. D. and E. F. in twenty Pounds respectively, of good and lawful Money of Great Britain, to be made and levied of the several Goods and Chattels, Lands and Tenements of them and every of them, to the Use of our said Sovereign Lord the King his Heirs and Successors, if the said A. B. shall happen to make Default in the Condition hereunder written.

Taken and acknowledg'd before Us,  
on the Day and Year aforesaid.

**T**HE Condition of the Recognizance is such, That if the above-bounden *A. B.* shall personally appear at the next General Quarter-Sessions of the Peace, to be holden for, &c. to do and receive what shall be then and there enjoined him by the Court; and in the mean Time that he be of Good Behaviour towards our said Sovereign Lord the King, and all other the People of this Kingdom, that then, &c.

*B. R.* will discharge one bound to the Peace, on good Behaviour, when done upon Malice or Vexation. *Style* 364.

It was holden by the Court, that if a Man be bound to the Good Behaviour by Justices of the Peace, for refusing to obey their Order, they ought not to grant a *Superfedeas*, because the Party was not bound in that Court upon Stat. 21 *Ja.* 1. c. 8. But they would grant a *Habeas Corpus*, and if they saw Cause, to discharge him. *Hill.* 1 *Car.* 1. *Bendlowe's Rep.* 301. *Blacknell's Case.*

*H.* was a Vicar, and for saying in his Sermon, that Devourers of Church Lands never thrived to the third Generation, he was bound to his Good Behaviour. *Tr.* 16 *Car.* 2. *B. R. Keb. Rep. pt. 1. p. 751. pl. 45.* *Just.* *Tyrrel* against *Hatch.*

A Justice can't bind to the Good Behaviour upon General Information, or upon such to commit a Man without finding Sureties. *Style* 18.

If a Justice, for want of Sureties for Good Behaviour, commit without Cause, 'tis false Imprisonment. To call a Mayor Fool in the Execution of his Office, is a Breach of Good Behaviour; and so it is to threaten Witnesses. *La.* 5. *Cro. Eliz.* 78.

If it be for the Peace, then say,

Mar. 247.

To answer unto such Matters as shall be objected against him, by *C. D.* of, &c. and to do and receive what shall be then and there enjoined by the Court, and in the mean Time to keep the Peace of our Sovereign Lord the King, as well towards his Majesty, as his Liege People, and especially towards the said *C.* and shall not do or procure to be done, any bodily Hurt to him, that then, &c.

The Justice must certify the Recognizance at the next Sessions, or forfeits 10 *l.* and if the Party does not appear, the Recognizance it self, with the Certificate of the Forfeiture, must be certified in the *Exchequer*.

That Process may be awarded against the Offender. *Dalt.*

190. Bad Words spoken to a Magistrate, not in the Execution of his Office, are not indictable. *Mod. Cases* 124. But for such little Offences *contra bonos mores*, the Law has made a proper Provision, and that is by requiring Surety of the Peace, or for the Good Behaviour, and by committing the Offender, if he refuseth to find such Sureties; or if he speak such Words in Court, they may proceed in a summary Way against him, by fining him for a Contempt of the Court, and committing him until he hath paid the Fine. 3 *Salk.* 190. Cases cited *contra* 1 *Cro.* 503. 2 *Bulst.* 139. 3 *Mod.* 139. *The Queen* versus *Langley*, *Hill.* 2 *Ann.*

Though Good Behaviour may be granted upon Discretion, and that by one Justice out of the Sessions, yet it is better not to do it, but upon Special Cause seen to themselves, or upon Suit of others, and those very honest; and seldom for one Cause alone, and not by one Justice only. *Lamb.* 120. *Dalt.* 291.

Steward of the Sheriff's Turn, Leet, Piepower may commit for an Affray in their View, and bind to the Good Behaviour. *Lamb.* 14.

Abusing of Officers in executing their Office, as Justice of Peace, Constable, or other Officer of the Peace; as a Justice seeth a Man break the Peace, and doth charge him to keep the Peace, who answers he will not: Words of Contempt against a Justice of Peace, though he be not executing his Office. *Dalt.* 258. 2 *Roll.* 79.

A Constable was bound to his Good Behaviour for arresting one in the Church-yard on a Sunday, after a *Certiorari* out of the King's Bench shewn. 1 *Cro.* 603.

One was bound, &c. for calling the Mayor a Fool, though not in publick Place of Justice. 3 *Cro.* 78.

To be drunk is a Breach of Good Behaviour, so is abusing a Justice of Peace his Warrant.

So is he guilty of it who chargeth one with Felony before a Justice, and will not prosecute, or who abuses a *Superseas* of the Peace to a wrong End.

If one be bound to the Peace, and afterwards do threaten J. S. to his Face, and in his Presence, to kill or beat him, this is a Breach of the Peace, and a Forfeiture of his Recognisance; otherwise if he threaten in his Absence, unless he lie in wait, and then it is. *Hill.* 18 *Ed.* 4. *Mich.* 22 *Ed.* 4. *Pulton de Pace* 22.

N. B. The Surety for the Good Behaviour may be forfeited by the extraordinary Number of People which the Recognisor hath attending upon him; or wearing more



## Behaviour, Peace, &amp;c.

more, or other Weapons, than he before usually did, or are meet for his Degree or Estate; or by using vigorous or terrible Words, or Threatnings, tending or inciting to the Breach of the Peace; or demeaning himself in his Behaviour, Company or Gesture, or doing of any thing which shall tend to the Breach of the Peace; or to put the People in Dread or Fear. *Mich. 2 Hen. 7. f. 2. b. Pl. 7.*

But to a Forfeiture of a Recognisance of the Peace, there must be an actual Breach of the Peace by an Affray, Battery, or the like. *2 Roll. Rep. 199. Stamp and Hyde, Mich. 18 Ja. 1. Hill. 18 Ed. 4. f. 28. Mich. 22 Ed. 4.*

A Man bound to his Good Behaviour is arrested on Suspicion of Felony, and escapes, that is a Misbehaviour, though it does not appear that any Felony was committed. *Pascb. 26 El. Godb. 22. Pl. 31.*

Procuring another to break the Peace is a Forfeiture of the Recognisance for the Peace. *Br. New Cases, f. 77. Pl. 351.*

Words which amount to a Breach of the Good Behaviour ought to be such as tend to the Breach of the Peace, or otherwise it is not a Breach of the Good Behaviour, by the Opinion of *Montague*, Chief Justice, and *Haughton* and *Chamberlain*, Justices. *Mich. 18 Ja. 1. 2 Roll's Rep. 199. Stamp and Hyde's Case.*

## Sureties of the Peace. See Peace.

**T**HIS is very near of Kin to the Good Behaviour, and therefore I have placed them together; for the Good Behaviour includeth the Peace, and something more.

One Justice may take Sureties for the Good Behaviour as well as for the Peace; though this is not usual, unless it be to prevent some great and sudden Danger, especially against a Man that is of any good Estate, Carriage or Report. And therefore one Justice ought to be very cautious how he grants it, at the Instance of any single Person, for generally it ought to be at the Instances of diverse credible Persons. *Dalt. 291.*

Sureties for the Peace are granted upon the Party's Oath.

But Sureties for the Peace are generally demanded by the Justice at the Instance of the Party; and before he grants it, he is to administer the following Oath to him or her who requires it.

The

## The Oath.

**Y**OU do swear, That you are in Fear of your Life, or some Bodily Hurt to be done, or to be procured to be done you by A. B. &c. and that you do not require the Peace of him for any Malice, Vexation or Revenge, but for the Causes aforesaid.

This being done, he may grant his Warrant to bring the Party before him, &c.

## The Warrant.

**E**ssex, *J.* **W**Hereas A. B. of, &c. hath this present Day made Oath before me, that he is afraid that C. D. of, &c. will beat, wound, maim or kill him, and hath therefore prayed Surety of the Peace against him: These are therefore to command you to cause the said C. D. to come before me, or some other Justice of the Peace for this County, to find sufficient Security, as well for his personal Appearance at the next General Quarter-Sessions of the Peace, to be holden for, &c. then and there to abide, and do what shall be enjoined him by the said Court; as also in the mean time to keep the Peace, and especially towards the said A. B. And if the said C. D. shall refuse so to do, that then you convey him to the Gaol aforesaid, and deliver him safely to the Keeper thereof; commanding you also the aforesaid Keeper, to receive the said C. D. into your Custody, and him there to keep, until he shall find such Security as aforesaid.

If this Warrant is directed to a sworn Officer, he need not shew it to the Party, but he ought to tell him the Contents, and may break open Doors to take him.

*Dalt.* 404. And it is grantable against these following;

|              |                                                    |                                                   |
|--------------|----------------------------------------------------|---------------------------------------------------|
| Feme Covert. | { But she is not to be bound, only the Sureties.   | Against whom Sureties of the Peace are grantable. |
| Husband.     | { It is grantable against his Wife, and upon Oath. |                                                   |
| Impotent.    | { For he may procure another to do the Injury.     |                                                   |
| Infant.      | — But he is not bound, only his Sureties.          |                                                   |
| Lunatick.    | — Having <i>Lucida Intervalla</i> .                |                                                   |
| Wife.        | — Against her Husband.                             |                                                   |

## Behaviour, Peace, &amp;c.

Cinque-Ports. { Not by Justices against one living there, but by a Writ out of the Chancery, directed to the Constable of *Dover-Castle*, and to the Lord Warden of the *Cinque-Ports*.

Lord or Peer. { Not by the Justice, but by *Supplicavit* out of Chancery, directed to the Sheriff.

These following are Forfeitures of the Recognisance for keeping the Peace.

Affray, Assault and Battery. { Being in it.

Breach of the Peace. { Doing any Thing which tends towards it, or procuring such Act to be done.

Dog. { To take away a Dog, or any Thing of Pleasure in my Presence, with Force and Violence.

Imprisonment. { Without Warrant.

Threatning. { By Words which may stir up Blows, or threatening Witnesses; or to beat the Person at whose Suit he is bound. *Latch* 5.

Goods. { Taking them wrongfully from the Owner's Person.

Officer. { Striking any Man in the Execution of his Office.

The Justice is Judge both of the Sureties, and the Sum, &c.

The Justice is Judge as well of the Sureties, as in what Sum to bind them, how long they shall stand bound, and of other Circumstances; but it must be mention'd in the Condition that it is to preserve the Peace, and that the Party shall appear at next Sessions, where the Justice must certify the Recognisance that the Party may appear; if he neglects, he forfeits 10*l*.

When a Man is thus bound before the Justice of Peace, if he that complains, shall afterwards make Oath above, that he is in Danger, and prayeth Surety of the Peace, there he shall have it; but then a *Supersedeas* must go to the Justice of Peace below, who took the Recognisance, to discharge it below.



An Indictment will not lye upon the Breach of this Recognisance; but a *Scire facias*. *Raymond* 196.

Doing any Act which may tend to the Breach of the Peace, or procuring another to break the Peace, will be a Forfeiture of the Recognisance aforesaid: But this Recognisance cannot be discharged even by Release of the Party himself, because the Conusor is bound to the King, and to keep the Peace in general, though by the Death of the King, or the Death of the principal Conusor, it is discharged of Course; the Death of the Sureties will not discharge it, for if forfeited, their Executors are liable. *Roll* 199.

Doing any Act which is a Breach of the Peace, or procuring it to be done, is a Forfeiture of the Recognisance.

If he which is bound to the Peace break his Recognisance, he may be indicted for it, for it is a new Offence. *Style* 369.

Bound to the Peace, or Good Behaviour, upon Malice or Vexation, may be discharged by the King's Bench. *Style* 364.

Bound to the Peace, or Good Behaviour, may be discharged by B. R.

The Sessions being a Court may demand Sureties of the Peace or Good Behaviour, against one single Justice; so out of Sessions one Justice may against another. *Dalt. cap. 8. Sed quære.*

Ecclesiastical Persons may be arrested for the Peace, if they be not celebrating Divine Service, and if so, they cannot. *Vide Stat. 1. Ri. 2. Co. 12. Rep. 100.*

Sheriffs, Coroners, &c. may be bound to the Peace.

A Justice upon Demand may grant the Peace against his own Wife. *Dalt. cap. 80.*

If a Man be bound to the Good Behaviour, and to appear at the next Assises, yet he may remove the Recognisance by *Certiorari* into the Chancery, or the King's Bench before the Day, and then he need not appear at the Assises; for the Judges having no Record before them there cannot call him.

One bound to the Good Behaviour, and to appear at Assises, may remove it by *Certiorari*.

If the Peace be required towards a particular Person, as well as generally towards all the King's Subjects, then the Party may be continued by the Sessions for Half a Year or more; but if it be not at the Instance of a particular Person, then he may be discharg'd the next Sessions, if no Body appear against him.

The Constable, when he has a Warrant, ought first to acquaint the Party with the Matter, and charge him in the King's Name to go before the Justice; and if he refuse either to go, or to find Sureties, may arrest him, and carry him to the Gaol, without bringing him before any Justice; and then such Officer ought to deliver in his Warrant at the next Sessions, and to certify all he did thereupon: If there be no such Refusal, the Officer, when

The Constable must execute his Warrant.

when he has arrested him, is not bound to go with him to find Sureties, but may detain him until he procure them; and upon Offer of Resistance or Departure he may be carried to the Gaol, or imprison'd in the Stocks, till further Aid be provided, &c. to convey him to, &c.

The Justice is not bound to demand Sureties, but being brought before him, if he hath no Sureties ready, or upon Refusal, he may be carried to Gaol by the Officer, without any new Warrant, or Command.

If the Officer arrest the Party, and bring him not before a Justice, or upon Refusal, &c. to the Gaol, he may be punish'd by Indictment for his Neglect, and at the Party's Suit for False Imprisonment.

If Sureties are put in, Justice to grant a *Superfedeas*.

Persons may give Sureties voluntarily.

If another Justice, than he who granted the Warrant, accept Sureties, &c. he must upon Request make a *Superfedeas*; but this does not discharge the first Warrant until the Party be bound indeed. *Lamb. 98.*

A Person suspecting that the Peace is, or will be demanded against him, may go to a Justice, and there voluntarily give Sureties, and procure a *Superfedeas*, &c.

After a *Superfedeas* deliver'd to the Officer, (though it contains neither the Sureties Names, or the Sum) yet may he neither arrest or detain the Party; and if he does it is False Imprisonment.

Notwithstanding *Superfedeas*, Justice must certify the Recognisance to next Sessions.

On Receipt of a *Superfedeas*, either from the Chancery or King's Bench, the Justice may supercede his own Warrant; which *Superfedeas* may be procured out of Chancery in the Vacation; and for not obeying it, tho' awarded against himself, an Attachment may issue against the Justice; and notwithstanding such a *Superfedeas* the Justice ought to certify the Recognisances (if he have taken any) to the next Sessions.

It has been held, that a *Certiorari* to remove a Recognisance for the Good Behaviour, or for an Appearance at Sessions, will supercede its Obligation. *2 Roll's Abr. 492. Dalt. cap. 75.*

But this would be inconvenient, and the contrary Opinion seems supported by the better Authorities *Cro. Jac. 282. Yelv. 207. 1 Bulst. 153. Hawk. P. C. Part 2. 294.*

*Superfedeas* in Court void unless granted on Motion in open Court,

Every *Superfedeas* out of Chancery, or King's Bench, is void unless granted upon Motion in open Court, and the Sufficiency of the Sureties must appear, and that the Peace was demanded *bona fide* upon Oath. *21 Jac. cap. 8.*

If he who is bound to keep the Peace hath broken it, and forfeited his Recognisance, the Justice ought to bind

bind him anew, but that must not be done before the Party be convicted of a Breach of the Peace upon his Recognisance.

If the Recognisance be made to keep the Peace generally without any Time or Day limited, it shall be construed to be during the Party's Life. *Lamb. 113.*

One Thousand Pounds Recognisance may be required for the Peace (as the Case may be) *viz.* If the Person be so dangerous, and if he which is bound to the Peace break it, and forfeit his Recognisance, he may be indicted for it, for it is a new Offence. *Style 322, 369.*

A Justice may take Money to lye in *Deposito* for Security of the Peace; and if the Party break the Peace, the Money to be forfeited to the King. *1 Cro. 446.*

The Warrant of Commitment for not finding Sureties for the Peace, ought to express in what Sum the Person is required to find Sureties, otherwise it may be so excessive, that any Person may be constrained to remain in Prison. *2 Vent. 22.*

Sureties for the Good Behaviour, or Peace, may be required by Word of Mouth against one that is present. The Justice may command the Sheriff, his own, or any other indifferent Man, or the Constable, to take the Party into Custody; and if he refuse to find Sureties, to carry him to Prison: But if the Party be absent, he must send his Warrant in Writing.

The Condition of the Recognisance is usually to keep the Peace, or Good Behaviour against all Men, and especially *A. B.* till the next Sessions, and then to appear; this is the best Form: But if against all Men only, or against *A. B.* only, it be to keep the Peace, &c. and not to appear, or say not when, or before whom to appear; or if it be to appear at another, not the next Sessions; or to keep the Peace, and set down no Time; or for a Year, or for Life; these are good. *Lamb. 103, 104.*

It is not safe for a Justice to bind a Man to the Good Behaviour, or send him to Prison for his Refusal to be bound upon a general Accusation, or Information, that a Man is a Person of ill Name, &c. without Information upon Oath. And yet if a Justice require Surety of me in such a Case, I must give it; but if I shall be committed to Prison in this Way for Refusal, I may be delivered on my *Habeas Corpus* in the King's Bench. *Style 16.* And perhaps an Action of False Imprisonment may lye against the Justice for it. It therefore behoves the Justice to be wary herein. *Pasch. 23 Car. B. R.*

If Recognisance be to keep the Peace without naming how long, it is for Life.

Justice may take Money as a *Depositum*.

Mittimus ought to express what Sum.

Sureties may be requir'd by Word of Mouth against one present.

What Form of Recognisance is good.

Not safe for Justice to bind to the Good Behaviour on a general Information.

If



K. B. will not grant *Superfedeas*, but *Habeas Corpus*, where one is bound to Good Behaviour, not obeying Justices Order.

If Sureties be at the Suit of a particular Person, he may release it.

If a Justice of Peace certify into the King's Bench, that such a Man broke the Peace in his Presence, the Party shall be put to his Fine without any Traverse. Cr. 132. a.

Where a Man was bound to the Good Behaviour, by Justices of Peace, for refusing to obey their Order, it was held by the Court, that they ought not to grant a *Superfedeas* in that Case, but they might grant a *Habeas Corpus*, and discharge him. *Bendl.* 361. *Blacknel's* Case.

If Sureties for the Peace be taken at the Suit of a particular Person, then he alone may release it before the Day of Appearance: But though this Release is certified with the Recognisance, as it ought to be, yet it doth not discharge the Appearance of the Party, because he is bound to the King, and likewise to appear, as well as to keep the Peace, which cannot be discharged by the Release of the Party; and therefore he ought to appear at the next Sessions.

If he break his Recognisance, it is a new Offence, and he may be indicted for that.

### The Release to be written under the Condition of the Recognisance.

**M**emorand. *That the abovesaid A. B. came before me J. S. Esq; on the Ninth Day of this Instant October, and did, as much as in him lay, freely release the said Security of the Peace formerly desired by him, as above-mentioned, against the above-bounden A. B. In witness whereof I have hereunto set my Hand and Seal, the said Ninth of October, &c.*

But without such a Release it may be discharged:

By the Death of the King.

By the Death of the principal Conuzor: But the Recognisance must be certified.

But the Death of the Sureties will not discharge it; for if forfeited, the Executors are liable.

## The Writ of Supplicavit.

**T**HIS Writ is in Effect an Accusation of the Ju-  
 stices below, as if the Party could have no Relief  
 of them, and therefore was forced to apply himself to  
 the Courts at *Westminster*. The Writ  
what.

This Writ may be granted either out of the Chan-  
 cery, or King's Bench; but in regard it is now but little  
 used, I shall say but little of it, only that it is enacted  
 by 21 *Ja.* 1. c. 8. That all Proceſs of the Peace, or  
 Good Behaviour, to be granted out of the Chancery, or  
 King's Bench, against any Person whatsoever, at the  
 Suit of any other, shall be void, unless such Proceſs shall  
 be granted upon Motion first made in open Court,  
 and upon Declaration in Writing upon Oath then ex-  
 hibited of the Causes for which such Proceſs shall be  
 granted; and unless such Motion and Declaration be  
 mention'd to be made upon the Back of the Writ, and  
 entered in the said Courts of Record. And if after it shall  
 appear to the said Courts, that the said Causes expressed  
 in such Writing be untrue, then the Courts may award  
 Costs and Damages to the Party grieved, and may also  
 commit to Prison the Offenders until they pay the said  
 Costs and Damages. Where grant-  
ed.  
21 *Ja.* c. 8.  
2 *Cr.* 456.  
669. Godbolt.

How obtained.

But this Method being very chargeable, troublesome  
 and tedious, I shall not here trouble my Reader with  
 the Method of executing and returning this Writ by the  
 Justice of Peace, in which he is only a ministerial Of-  
 ficer: Whoever has a Curiosity that Way may read it at  
 large hereafter, Title *Supplicavit*.

The Party may also move the Court for a *Supersedeas*; Supersedeas,  
how obtained.  
 but this must be upon a *Supplicavit* only, and not where  
 the Justice proceeds *ex officio*, because by the Stat. 21 *Ja.*  
 1. c. 8. it must appear to the Court that Proceſs of the  
 Peace, or Good Behaviour, is required against the Offender  
 in that Court, by the Party grieved, out of which the  
*Supersedeas* is desired.

## A Mittimus for Breach of the Peace.

Essex, *ff.* **I** Herewith send you the Body of T. P. of, &c.  
 whom I charge and require you to take into  
 your Custody, for several Misdemeanors committed by him  
 against the Peace; and you are hereby required to keep him  
 the said T. P. safely in the common Gaol until he shall pro-  
cure

## Behaviour, Peace, &amp;c.

*cure two sufficient Persons to be bound with him in a Recognizance to the King's Majesty; that is to say, each of the said Sureties in the Sum of 10l. and himself in 20l. to appear at the next General Quarter-Sessions of the Peace, to be holden, &c. and in the mean Time to be of the Good Behaviour: And hereof fail not. Given under my Hand and Seal, &c.*

## A Superseedeas of the Peace.

Essex, ss. **W** Hereas A. B. having made Oath before, &c. That C. D. of, &c. had threaten'd to beat or wound him the said A. B. and the said C. D. being by Virtue of a Warrant granted by the said, &c. this Day brought before me for the Misdemeanor aforesaid, and hath entred into Recognizance with E. F. and G. H. in the Sums of, &c. for his personal Appearance before the Justices of the Peace, at their next General Quarter-Sessions to be held, &c. and in the mean Time to keep the Peace towards his Majesty, and all his People; but especially towards the said A. B. These are therefore in his Majesty's Name to command you, and every of you, to forbear to arrest, imprison, or otherwise molest the said C. D. for, or by Reason, or Means of the Misdemeanor aforesaid; and if he shall be already taken or imprison'd for the same, that then you cause him to be forthwith discharged. Given, &c.

**Bigamy.** See **Felony.**

**Willets.** See **Fuel.**

## Blasphemy.

9 & 10 W. 3.

**E** Very Person bred in, or professing the Christian Religion, and who shall by Writing, Printing, Teaching, or advised Speaking, deny any one of the Persons in the Trinity to be God; or assert that there are more Gods than one; or deny the Christian Religion to be true; or the Holy Scriptures to be of Divine Authority, and be convicted thereof by Indictment or Information at *Westminster*, or at the Assizes, shall be disabled to have any Office, and that Office which he hath shall be void.

If convicted a second Time, he shall be disabled to sue in any Court, or to be a Guardian, or Executor, or Admi-



Administrator, and be incapable of any Legacy, or Gift, or of any Office ; and be committed for three Years without Bail.

Conviction must be by Oath of two credible Witnesses. Information for Words spoken must be on Oath before a Justice of Peace within four Days after spoken, and the Prosecution must be within three Months after the Information. But if the convicted Person for the first Offence shall, within four Months after his Conviction, acknowledge and renounce the same in that Court where he was convicted, he shall be discharged from the said Penalties. Information for Words must be in 4 Days after spoken, and Prosecution in 3 Months after Information. If convicted Person recant in four Months after

Conviction, he shall be discharged. 7 Ann. c. 14.

One T. was prosecuted for uttering divers blasphemous Expressions, execrable to hear, of our Blessed Saviour and Redeemer Jesus Christ, and that Religion is a Cheat, and that he neither feared God, the Devil, or Man ; On his Trial, *Hale* said that such kind of blasphemous Words were not only an Offence to God and Religion, but a Crime against the Laws, State, and Government ; for to say Religion is a Cheat, is to dissolve all those Obligations whereby Civil Societies are preserved, and that Christianity is Part of the Laws of *England* ; and therefore to reproach the Christian Religion is to speak in Subversion of the Law. He was sentenc'd to stand in the Pillory in three several Places, to pay one thousand Marks, and to find Sureties for his good Behaviour during his Life. 1 *Vent. Rep.* 393. *Taylor's Case.*

## Books.

ONE Justice may grant a Warrant to search for any Book taken out of any Parochial Library, which if found, shall be immediately restored again, or it shall be lawful for the Parson, or any other Person, to bring an Action of Trover and Conversion. *Vide the Act 7 Ann. c. 14.* One Justice may grant a Warrant to search for a Book taken out of a Parochial Library.

This Act not to extend to the publick Library at *Rye-gate* in *Surrey*.

Brandy. See Alehouses and Customs.

Bread. See Weights and Measures.

Brewers,

## Brewers, &c. and Excise.

Brewer must  
not be a  
Cooper.

**B**Y Stat. 23 *Hen.* 8. a Brewer is prohibited to be a Cooper; and if he maketh a Vessel not marked by a Cooper, and puts Beer therein, he forfeits three Shillings and four Pence.

By 12 *Car.* 2. *cap.* 23.

|          |   |                     |    |            |
|----------|---|---------------------|----|------------|
| The Ale  | { | Barrel must contain | 32 | } Gallons, |
|          |   | Kilderkin,          | 16 |            |
|          |   | Firkin,             | 8  |            |
| The Beer | { | Barrel must contain | 36 | } Gallons, |
|          |   | Kilderkin,          | 18 |            |
|          |   | Firkin,             | 9  |            |

within *London*, and the Weekly Bills of Mortality, but in all other Parts of *England* 34 Gallons shall be accounted a Barrel of Beer or Ale, whether strong or small, by 1 *W. & M.*

The Duties of  
Excise.

By the same Statute the Parliament gave the King, For every Barrel of Beer or Ale, above 6 *s.* the Barrel, 1 *s.* 3 *d.* brewed by any that sell the same, to be paid by the Brewer.

For every such Barrel of 6 *s.* or under, 3 *d.*

For a Barrel of Vinegar Beer, brew'd by a common Brewer, 6 *d.*

For every Hoghead of Cyder and Perry, sold by Retail, 1 *s.* 3 *d.*

For every Gallon of Metheglin, or Mead, one Half-penny.

For a Gallon of Strong-Water, to be paid by the Maker, 1 *d.*

For a Barrel of Beer or Ale, imported from beyond Seas, 3 *s.*

For a Ton of Cyder or Perry imported, 5 *d.*

For a Gallon of Spirits made of Wine, or Cyder, imported, 2 *d.*

For a Gallon of Strong-Water, imported, 4 *d.*

The said Duties set on Foreign Liquors imported, to be paid by the Importer before Landing.

By the 22 *Car.* 2. *cap.* 4. Brandy is charged with 8 *d.* per Gallon.

These Duties, among others, were for Life. The next Year Tenures *in Capite*, and the Courts of Wards and Liveries, &c. were abolish'd; and in lieu thereof, the Parliament gave the King, his Heirs and Successors, the like Duty.

These were confirmed by Stat. 13 Car. 2. c. 7. and further explained by 15 Car. 2. c. 11 & 12. & 16 & 17 Car. 2.

But these Duties being determin'd by the Death of that King, the Parliament by Stat. Jac. 2. cap. 1. settled them on K. James 2. for his Life.

Afterwards, by Stat. 1 Will. & Ma. cap. 24. *Seff.* 1. an additional Duty of 9d. for every Barrel above 6s. and 8d. and under that Value 3d. was given to them.

By Stat. Anno 2 Will. & Ma. cap. 3. the Duties formerly given to K. Charles and K. James 2. were given to K. William and Q. Mary for their Lives.

By Stat. 4 W. & M. cap. 3. the Additional Duty of 9d. per Barrel was settled for 99 Years, as a Fund for a Million of Money, &c.

By Stat. 1 Ann. cap. 7. the Excise was settled on Q. Anne, during her Life, under some Restrictions. *Vide* the Act.

By Stat. 8 Ann. a further Duty of 3d. per Barrel, on every Barel of 6s. and of 1d. on every Barrel under 6s. was imposed for 32 Years from *Lady-Day*, 1710.

By Stat. 1 Geo. cap. 1. the Excise was settled on His late Majesty K. George, during his Life.

Common Brewers must make Entry at the Excise-Office Weekly, and Inn-keepers must do it Monthly, on Penalty of 5*l.* for a Brewer and Inn-keeper, and 20*s.* for an Alehouse-keeper, &c. But note, by *Ch.* 24. Brewer forfeits 10*l.* and Inn-keeper 5*l.* and Alehouse-keeper 20*s.* as before; and for not paying and clearing off within a Week and a Month after Entry made, to pay double Value of the Duty. Commissioners to appoint Gaugers, who may, on Request, enter into Houses to gauge the said Liquors; and in the Night, must take a Constable with them. Brewer, or, &c. refusing to suffer Gauger to enter and gauge, shall be forbidden to sell such Liquors 'till Excise paid, on Penalty of double Value of such Liquors sold, beside 1*l.* by *Ch.* 24. Allowance to be made Brewers of three Barrels in every twenty-three of Beer, and two Barrels in twenty-two of Ale, for Waste and Leckage; but this is now by Stat. 1 W. & M. reduced to two and one Half, within the Bills of Mortality. Brewer making false Entry shall lose, besides Penalties aforesaid, the Allow-

12 Car. 2. c. 23 & 24. Brewers and Inn-keepers.

By 15 Car. 2. False Entry is rectified in a Week, no Penalty. 7 & 8 W. 3.



Confession, or  
one Witness.

15 Car. 2. c. 11.  
8 W. 3. c. 19.  
Conviction by  
two Witnesses  
before two  
Justices.

ance for Leakage for six Months. No Ale or Beer to be delivered to Retailer before Excise paid, Ale, &c. sold in Fairs, shall pay Duty by Brewer or Retailer. Commissioners in *London*, and two Justices in any other Cities or Counties, have Power to hear and determine Offences. In Case Justices neglect, or refuse for fourteen Days, then Sub-Commissioners may do it. Party offending may appeal to Quarter-Sessions, whose Judgment shall be final. Proof by Confession, or Oath of one Witness. Penalty to be levied by Distress and Sale, if not redeemed in fourteen Days; for want, Imprisonment 'till Satisfaction made. *Note*; Forfeitures may be mitigated, but not less than double Value of Duty of Excise that should have been paid. Forfeitures, after Charges deducted, shall be employ'd three Parts to the King, fourth to Informer. See the Oath for Officers of Excise to take, which must be certified by Justices to next Quarter-Sessions.

Sellers of Beer, &c. shall not set up or alter any brewing Conveniencies, without Notice to the Excise Office, on Penalty of 50*l.* but by Stat. 8 *Will.* 3. *cap.* 19. this Penalty is increased to 200*l.* And for every conceal'd Tun, Fat, &c. discovered, forfeit 50*l.* together with the Beer, &c. which shall be for the Use of the Poor. Gauger shall give Brewer, a Week after Entry made, a Copy under Hand of his Report made to Commissioner, or Sub-Commissioner, on Pain of 40*s.* Brewer may rectify false Entry within a Week. No Commissioner, Farmer, or Sub-Commissioner, shall act as a Justice to execute this Act. If the Brewers do not carry out their Drink within the Hours limited by the Act, *gd. vid.* forfeit 20*s.* a Barrel, to be levied and recovered as before. Brewers mixing Worts after Gauger has taken an Account, without giving Notice to Gauger; or for concealing any Wort, forfeit 20*s.* *per* Barrel.

Brewer compounding for Duty of Excise shall not permit any other Brewer to brew any Drink in his Brew-house, without giving Notice to Officers of Excise on Pain that as well the Brewer who shall brew the same, as the Brewer for whom the said Beer shall be brew'd, shall forfeit for every Barrel 5*l.* to the King and Informer.

15 Car. 2. c. 11. Sellers of Coffee, Tea, Chocolate, Sherbet, shall be licensed by Justices at Quarter-Sessions, Certificate being first shewed that they have given good Security for Payment of Dues to the King, or chief Magistrate where they inhabit, on Penalty of 5*l.* a Month, for selling without License.

# Brewers, &c. and Excise.

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Two able Gaugers shall be appointed, one by Commissioners, the other by the Brewers, to gauge all Tuns, &c. Gauger shall take no Bribes of, &c. to make false Returns, nor Brewer give any, on Penalty of 10*l.* to be proved by two Witnesses upon Oath, before two Justices, or chief Magistrate in Town Corporate, to be levied by Distress, &c. for want of which, Imprisonment for three Months, without Bail. No foreign Liquors to be landed before Entry made, and Excise paid, on Forfeiture of the Liquors, or Value, to King and Informer, to be recovered of Importer or Proprietor. No Person shall bring on Shore any exciseable Liquors, except Beer, Cyder, Perry, and Metheglin, into any Part of *England*, by Coast Cocquet, *Transfire*, or Certificate, 'till Entry be made, on Forfeiture of double the Value. No Appeal before single Duty of Excise be laid down, and Security given for Payment of Forfeitures, if recover'd : If Cause go for the Appellant, then Money so deposited shall be restored ; double Costs to be paid by either Side, against whom the Cause goes.

Gaugers.

Two Witnesses on Oath before two Justices.

No foreign Liquors landed before Duty paid.

No Appeal before single Duty laid down.

Persons making Beer-Vinegar shall pay Excise. Colleges exempted from Excise. Two Justices may sit once a Month to hear, &c. Offences. Third Part of Forfeitures not before disposed of, for the Poor, the other for the King, the other to Informer. Appeals in *London*, or Limits, in two Months ; in any other County in four. After first Judgment given, Notice to be given to Party concern'd. Appeals, &c. to be determin'd in the proper County.

Appeals in *London* in two Months, in the Country in four.

Commissioners, or any other Persons concerned under them, shall keep an Office in every Market-Town, and attend there every Market-Day to receive Entries, and Duties of Excise, on Penalty of 10*l.* Brewer, or Retailer, &c. using Molasses, coarse Sugar, Honey, &c. for Ale or Beer ; or having in Custody above the Quantity of ten Pounds, forfeit 100*l.* Servants, or others being Accessary, &c. 20*l.* for Default of Payment, three Months Imprisonment.

1 W. & M. c. 24.

5 & 6 Will. & M. c. 5.

7 & 8 Will. & Ma. c. 30.

8 & 9 Will. 3. c. 18.

Makers of Vinegar, Cyder, Mead, or Sweets for Sale, concealing, or conveying them away from Gauger, forfeit 40*s.* a Barrel ; and so proportionably for every Gallon so hid, &c. Refusing to let Gauger take Account, forfeit 5*l.* Brewers of Vinegar, or Sweets, carrying out to Customers without Notice to Officers, forfeit 40*s.* per Barrel. Persons concealing Tuns, Casks, &c. forfeit 50*l.* Brewers, &c. brewing a Party-Guile, shall declare to Gauger how much intended for Strong, and how much for Small Beer ; on Refusal, must pay Duty for all Strong, besides

## Brewers, &amp;c. and Excise.

sides 20 s. a Barrel for every Barrel contain'd in such Guile; and for increasing Strong-Beer, after declaring, as aforesaid, forfeit 5 l. a Barrel; and so proportionably, &c. Servants concern'd in such Increase forfeit 20 s. and in Default of Payment, three Months Imprisonment. 50 l. Penalty on Brewers, &c. if they hinder Gauger from coming into Brew-Houses in the Day; or in the Night, if with a Constable, or to stay there, and hinder him from executing his Office, &c. Brewer mixing Small-Beer with Strong, after carried out.

8 & 9 Will. 3.  
c. 18.

Every Person making or keeping any Wash-Cyder, &c. fit for Distillation, and having in his Possession, any Still of 20 Gallons, or upwards, on Proof before a Justice on Oath, shall be deemed a common Distiller. 8 W. 3.

Commissioners of Excise, and Justices respectively, on any Information before them against the Laws of Excise, may summon any other than the Party accused, to give Evidence, &c. on Refusal, shall forfeit 10 l. in manner as before directed; Forfeiture to King and Prosecutor.

Informations,  
&c. may be  
heard by three  
or more Com-  
missioners.

And by an Act 1 G. 2. All Complaints and Informations which shall be depending at the chief Office of Excise, may be heard and determin'd by any three or more of the Commissioners, and it shall be sufficient in the written Account of such Proceedings, to mention that such Complaints or Informations are made and exhibited to three of such Commissioners, without particularly mentioning their Christian and Surnames; and every Adjudication and Determination of three Commissioners shall be good and valid in Law.

Every Determination shall be executed by Warrant of three Commissioners.

Every such Adjudication and Determination shall be executed by a Warrant under the Hands and Seals of any three Commissioners, whether such Commissioners setting their Hands and Seals to such Warrant shall not happen to be the particular Commissioners by whom the Adjudication or Determination shall be made; or whether such three Commissioners were Commissioners at the Time when such Adjudication shall happen to be made; provided that the Persons so setting their Hands actually are Commissioners.

Commissioners not doing their Duty forfeit their Places, &c.

Commissioners not doing their Duty forfeit their Places, and made incapable of any other, and must make good any Sums misapplied, to any that will sue for the same. Brewers having a private Pipe, or Stopcock, &c. by which any Beer, &c. may be conveyed and concealed in any Tun, Batch, &c. forfeit 100 l. Brewer altering or setting up any Tun, Batch, Cooler, &c. without Notice to Officer of Excise, forfeits 200 l. Brewer or Cyder-maker, delivering to Distiller or Vinegar-maker, any

Walt



Wash, &c. without Notice to Gauger, forfeits 20 s. 8 & 9 W. 3. c. 18.

Gauger to keep an Account of Liquors made by Distillers. Gaugers, &c. making a false Charge, forfeit for every Gallon so charged, 10 s. Gauger may take off the Heads of Stills, and examine them; if they are at work, to stay till they are wrought off. Gauger to gauge all Wash found in Distillers Houses. Gauger missing in twenty-four Hours any Liquor he had before gauged, not receiving on Demand Satisfaction about it, may charge Distiller with so much Low-Wine as such Liquor, &c. so missing, &c. would in his Judgment have made.

10 & 11 Will. 3, 3, 21. Gaugers.

Gaugers may taste the Drink on any Brewer's Dray, and may also enter into any Inn-keeper's, &c. Cellar, to taste the Drink, that takes any of a common Brewer. Inn-keepers, &c. refusing them so to do, forfeit 5 l.

Gauger to leave with Brewer, &c. a Copy of the Charge made on him within three Days after the End of every Week; Gauger refusing, or neglecting to leave such Charge, &c. forfeits 10 l. or that shall charge more on Brewer, &c. than such Copy left contains. Gauger leaving Copy of Charge, as aforesaid, shall not be liable to any Penalties on any other Act, for not leaving Notes, &c. Officers suspecting any private Back, Tun, &c. may break open Brew-house Doors, &c. enter and search; Owner opposing, forfeits 20 l. If no such Pipe found, Officer to make good the Ground, or make the Owner such Satisfaction as two Justices, *Quorum unus*, shall adjudge; or Party may bring his Action. Penalties in this Act to King and Informer, to be recover'd by any Law of Excise, or by Action of Debt, &c. Notes of every Gauger shall be left with Brewer, &c. by Gauger containing Inches and Tenths of Backs and Warts of the Tuns, and Quantity of the Liquors, on Penalty of 40 s.

Gauger must leave a Copy of his Gauge with Brewer.

By Stat. 6 Geo. 1. ch. 21. all Distillers, and Makers, and Sellers of Brandy, and Strong-Waters, or Spirits, are to make Entries of all Ware-houses, and the Brandy, &c. therein, at the next Office of Excise, under the Penalty of 20 l. and Forfeiture of the Liquors; and no Brandy is to be sold, but when the same shall be in the said Ware-houses so entred, on Pain of forfeiting 40 s. per Gallon.

Distillers are to make Entries of Ware-houses, &c.

Information shall not be brought for any Mis-entry but within three Months next after the Offence committed, and Notice thereof given to the Defendant in Writing, within a Week after the Information entred.

Information must be in 3 Months.

## Brewers, &amp;c. and Excise.

No Writ of *Certiorari* shall supersede Execution, or other Proceedings upon any Order made by the Justices, by Virtue of 12 *Ca. 2. c. 23.*

Occupier of an House where any Brewer keeps a private Store-house for Liquors, forfeits 50*l.* and the Liquors may be seized and given to the Poor.

Officer on Suspicion of private Still, may make Affidavit before a Justice of Peace, and by his Warrant break open Doors.

If Officer suspect any private Still to be set up in any House, he may make Affidavit of it before a Justice, in which he must set forth the Grounds of his Knowledge, or Suspicion, and then he may, in Day-time, as aforesaid, and by a Warrant from that Justice, before whom he made Affidavit, break open the Door, or any Part of the House, and enter and seize the Stills, and detain them in that House, or elsewhere; and if not claimed within twenty Days after the Seizure, they may be sold; one Moiety to the King, the other to the Discoverer.

But if claimed within twenty Days, then the Person claiming it, shall, for every Ware-house in which such Still shall be found, and for every Still also, forfeit 200*l.*

But if no Still be found, then Officer must make good the House, or pay such a Satisfaction as two Justices as aforesaid shall adjudge.

Brewer suffering another to use his Brew-house.

If a Brewer suffer another to use his Brew-house, after he hath agreed for the Duty, without giving Notice thereof, and paying the Excise, the Brewer, and the Person for whom the Drink is brewed, forfeit 5*l.* for every Barrel to the King and Informer.

One Justice hath Power to administer an Oath to Officers, to make a Charge on Hops.

9 Ann. cap. 12. Hop-Gatherers privately conveying them away.

Pickers, or Gatherers of Hops, and others, privately conveying Hops from the Place of Growth, or where they are plac'd, in order to be cur'd, bagg'd and weigh'd, shall forfeit 5*s.* for every Pound, to be levied by Distress and Sale; and if no Distress, the Offender is to be committed to the House of Correction, not exceeding a Month.

And if any Person shall obstruct, or abuse the Officer in his Duty, he shall forfeit 5*l.* to be levied *ut supra.*

9 Ann. c. 12.

Justice of Peace may commit a Brewer for not paying the Duty of Excise. 1 *Mod. Rep.* 102.

Indictment against a Brewer for selling Ale to an unlicensed Alehouse-keeper. 29 *Car. 2. B. R.*

Information on the Stat. 5 *Eliz. cap. 4.* against a Brewer, *Cro. Ja.* 178. None ought to be a common Baker or Brewer, unless he has been an Apprentice Seven Years. 12 *Co.* 12.

The Oath of an Officer of the Excise may be administered by two Justices; the Oath to be certified at the next Sessions, there to be recorded.

No Officer of the Excise shall be a Justice of the Peace.

The Act of 39 Eliz. intituled, *An Act to restrain the excessive making of Malt*, is repeal'd; and all Orders made by Justices of Peace, for restraining Masters from making Malt, are vacated by Stat. 9 & 10 W. 3. cap. 22. Stat. 39 Eliz. is repeal'd by 9 & 10 W. 3. c. 22.

The Proprietors of any private Still, Back, or other Vessel, or the Person in whose Custody the same shall be found, shall forfeit for every such Still, &c. 200*l*.

The Justices of Peace, upon any Information for an Offence against the Excise, may summon any Person, other than the Party accused, to appear before them, to give Evidence; and the Person making Default forfeits 10*l*. to be recovered by Action of Debt, &c. in the Courts of *Westminster*; one Moiety to the King, the other to the Prosecutor.

## A Certificate upon taking the Oath about Excise.

Effex, ff. **W**<sup>E</sup> whose Names are hereunto subscribed 12 Car. 2. c. 23. confirmed. c. 24. two Justices.  
 (his Majesty's Justices of the Peace of the County aforesaid) do certify, that A. B. of C. in the said County, hath before us (this present Day) taken the Oaths, (a) and the Oath mentioned in the Statute made in the Twelfth Year of the Reign of the late King Charles 2. (a) See the Statutes of 1 Gul. & Mar. c. 1. & 8. and Title Oaths, Post.  
 intituled, (A Grant of certain Impositions upon Beer, Ale, and other Liquors, for Increase of his Majesty's Revenue during his Life.) Given under our Hands and Seals the \_\_\_\_\_ Day of \_\_\_\_\_ in the first Year of the Reign of our Sovereign Lord George 2. over England, &c.

None shall meddle with any Office relating to the Excise 'till they have taken the said Oaths before two Justices of the Peace of the County where such Office is, or one Baron of the Exchequer; and the Oath of an Exciseman *vide* Title Oaths, *post*.



## A Warrant to levy the Forfeiture for not making an Entry of Liquors.

11 Car. 2.

**W** Hereas Complaint hath been made unto us, by A. B. Officer of Excise, that C. D. of, &c. in the County aforesaid, Common Brewer, hath neglected and refused to make a due Entry at the Excise-Office in, &c. aforesaid, of all Liquors by him brewed, from, &c. to, &c. [setting forth the Time] according to the Statute in that Case made and provided; which Complaint appearing to be true on Examination into the Matter, the said C. D. hath forfeited the Sum of 10l. to be levied by Distress and Sale of his Goods and Chattels: These are therefore in his Majesty's Name to require you to take a sufficient Distress of the Goods and Chattels of the said C. D. and to sell the same, if not redeemed within Fourteen Days next after taken, and thereby raise the said Sum of 10l. and when so raised and levied, that you do pay the same to such Person and Persons as is limited by the Statute, rendring the Overplus (if any) unto the said C. D. And if you cannot find a sufficient Distress, that then you do certify the same to us, that we may make such further Proceedings in the Premises as to Justice appertains. Given, &c.

## A Warrant to levy the double Value of the Excise on a Brewer, for not paying according to Entry made.

To the Constable and Burtholders of, &c.

12 Car. 2.  
cap. 23.

Essex, ff. **F** Orasmuch as Complaint hath been made unto us, whose Names are hereunto subscribed (his Majesty's Justices of the Peace of the County aforesaid) that A. B. of C. in the County aforesaid, Common Brewer, hath not paid nor clear'd off his Duty of Excise unto such Persons as, by the Statute in that Behalf made, is appointed, according to the Entry of the said A. B. in that Behalf made, as by the Statute aforesaid is directed; and upon the Examination of the Complaint aforesaid, we find the same to be true: These are therefore (in his Majesty's Name) to Will and Require you, and every of you, that you, some or one of you, do levy the Sum of, &c. upon the Goods and Chattels of the said A. B. (being double the Value

of the Duty so not paid or clear'd off, and by him forfeited, according to the Form of the Statute aforesaid;) and to sell the said Goods and Chattels (if they shall not be redeem'd within Fourteen Days;) and that you pay the Monies so levied to such Person or Persons as by the said Statute is directed, rendring to the aforesaid A. B. the Overplus (if any be) and for want of sufficient Distress, that you do forthwith certify us thereof, to the End that we may proceed touching the same as by Law is appointed. Hereof fail not, &c.

A Warrant against a Brewer who maketh a false Entry, by which the Allowance of Leakage is taken away for six Months.

To the Constable, &c.

Essex, ss. **W** Hereas N. V. of, &c. Common Brewer, 22 Car. 2. hath this present Day been duly convicted cap. 23. before us, that he wilfully made a false Entry of three Barrels of, &c. by him lately brewed, contrary to the Form of the Statute in that Case made and provided: And whereas the Allowance appointed to be made for Waste, by Filling and Leakage, are (a) three Barrels upon every Twenty-three Barrels of Beer; which Allowance, in Case of false Entry, and Conviction thereof as aforesaid, shall be forfeited for six Months: We do therefore adjudge, that the said N. V. for this his Offence shall forfeit and lose the said Allowances for the Space of six Months next ensuing. Given, &c. (a) Per 1 W. & M. cap. 24. It is two Barrels and Half within the Weekly Bills. Two Justices, in the County, and two Commissioners within the Limits of the chief Office in London. Proof by one Witness upon Oath. 15 Car. 2. c. 11.

A Warrant to levy 10*l*. for Bribing an Officer of Excise to make a false Return.

To the Constables and Borsholders, &c.

Essex, ss. **F** Orasmuch as it hath been duly proved before us, that A. B. of, &c. Brewer, did Bribe (or Corrupt, give Money, Fee, or other Reward, &c.) to C. D. Gauger (or other Officers, &c.) to make a false 15 Car. 2. cap. 11 & 12. Two Justices.

*a false Return, or Report unto the Office of Excise of Beer, Ale, &c. exciseable within his Division (Charge or Warrant) in the said County, or to forbear or omit the Doing or Executing of his Place or Employment, against the Form of an Act of Parliament lately made (intituled, An Additional Act for the Ordering and Collecting the Duty of Excise, and Preventing the Abuses therein) whereby he hath forfeited Ten Pounds for his said Offence: These are therefore (in his Majesty's Name) to charge and command you, and every of you, to levy, by Distress and Sale of the Goods of the said A. B. the aforesaid Ten Pounds, rendring to him the Overplus thereof. Hereof fail not at your Perils. Given under our Hands and Seals, the, &c.*

### A Mittimus to the Gaol for Want of Distress.

To the Constable and Borsholders of the Hundred, &c. and to the Keeper of, &c.

15 Car. 2. cap.  
11 & 12.  
Two Justices.  
8 & 9 W. 3.  
1 Lut. 499.

Essex, ss. **W** Hereas it was duly proved before us, that A. B. of, &c. Brewer, did Bribe C. D. Gauger, to make a false Return into the Office of Excise of Beer, &c. Excisable within his Division in the County (against the Form of an Act of Parliament lately made, intituled, An Additional Act for the Ordering and Collecting the Duty of Excise, and Preventing the Abuses therein) whereby he forfeited Ten Pounds for his said Offence: And we did therefore, by Warrant under our Hands and Seals, charge and command you to levy by Distress and Sale of the Goods of the said A. B. the aforesaid Ten Pounds: And you the said Constable have returned to us, that for Want of such Distress you could not levy the same: These are therefore (in his Majesty's Name) to charge and command you, the said Constable and Borsholders, and every of you, to Attach the said A. B. and him convey to his Majesty's Gaol aforesaid, and there deliver him to the Keeper of the same, together with this Precept; Commanding also you the said Keeper to receive him into the said Gaol, and him there safely keep by the Space of three Months, without Bail or Mainprize. Hereof fail not at your Perils. Given under our Hands and Seals, the, &c.

The like as in the two former Warrants (*Mutatis Mutandis*) against any Sworn Gauger, or other Officer that shall take and receive any Bribe, Money, Fee, Gift or other Reward of any Brewer, or other Person, for any Cause or Matter relating to the Excise.

Affidavit



Affidavit before a Justice of Suspicion of  
private Stills.

**A.** B. of, &c. Officer of Excise, maketh Oath, that  
C. D. of, &c. on or about, &c. informed him, that  
E. F. of, &c. did make use of private Stills, in the House,  
&c. for the Distillation of low Wines and Spirits, &c. con-  
trary to the Acts of Parliament in that Case made, which  
gave him, this Deponent, a Suspicion of his being Guilty  
thereof; and having made it his Business to detect the same,  
and lately in the Night-time observ'd several Barrels, seem-  
ing to be full of some Liquors, conveyed from the House of  
the said, &c. who is by Profession no ways concerned in any  
Sort of Liquors; this Deponent hath just Reason to suspect the  
said F. E. is Guilty of using private Stills, or some other  
Person for him, for the Distilling of Liquors, to the de-  
frauding his Majesty of his Duty for the same.

Distillers.  
10 & 11 W. 3.

Jurat' coram W. B. Ar'  
un' Justiciar' pacis pro  
Com' præd' die, &c.

A Warrant to search for private Stills.

**W** Hereas A. B. of, &c. Officer of Excise, 10 & 11 W. 3.  
hath this Day made Oath before me, that  
hath Reason to suspect, that E. F. of, &c. Distiller,  
makes use of private Stills in the House of, &c. in your  
Parish, for Distilling of Liquors, and hath convinced me of  
the Justness of his Suspicion by several material Circum-  
stances: These are therefore in his Majesty's Name to com-  
mand you to assist the said A. B. in making a diligent  
search in the House of the said, &c. for any Still or Stills  
set up by the said E. F. or any other Person; and in Case  
you find any such, that you do seise and detain the same:  
and if they are not owned, and cannot be proved to be the  
Stills of the said E. F. or any other Person, that you do  
sell the same Stills within Twenty Days after Seisure, and  
dispose of the Monies arising by such Sale; one Moiety thereof  
for the Use of the King, and the other Moiety to the said  
A. B. who shall so discover and seise the said Stills, ac-  
cording to the Acts of Parliament in that Case made. Gi-  
ven, &c.

A Warrant

A Warrant against a Person for privately conveying away Hops to defraud the King of his Duty.

9 Ann.

Essex, ss. **W** Hereas A. B. of, &c. Officer of Excise hath this Day made Information before me, that C. D. of, &c. on, &c. last past did privately convey and carry away from, &c. six Pounds of Hops, being, with others there, put to be cured, without paying Duty for the same, or giving Notice to any Officer thereof, contrary to an Act of Parliament in that Case made: These are therefore in his Majesty's Name to command you, to levy the Goods and Chattels of the said C. D. by Distress and Sale thereof, the Sum of Thirty Shillings, which he has forfeited by the Offence aforesaid. And if you can find Distress to satisfy the said Forfeiture, that then you do convey the said C. D. to the House of Correction, &c. Gaol, &c.

An Indictment against a Brewer for brewing Strong Beer without giving Notice to the Gauger.

Essex, ss. **T** HE Jurors, &c. do present that J. O. of, &c. in the County aforesaid, Brewer, on the 12th Day of February, in the Eighth Year, &c. at L. aforesaid in the County aforesaid, privily and secretly brewed twenty Barrels of Strong Beer, and that he afterwards (that is to say) on the same Twelfth Day of February, in the Year aforesaid in the County aforesaid, sold and exposed to Sale to divers Persons unknown, the same Twenty Barrels of Strong Beer privately and secretly, and without any Notice given thereof to any Gauger or other Officer of the Excise, with an Intent to defraud our said Sovereign Lord the King of his Excise-Duty for the said Twenty Barrels of Strong Beer, to the great Deceit of our said Sovereign Lord the King, his Crown and Dignity.

## Bridges.

**B**ridges, of common Right, ought to be repaired by Bridges of the Inhabitants of the whole County, Riding or common Right Corporation, within which they are situated, unless some to be repaired by the County. particular Persons are bound to repair by some Tenure, *Exc. Cro. Car. 365.* and if the same are within two Precincts, then the Inhabitants of each ought to pay their respective Parts towards the Repairs. *Roll's Abr. 368.*

But if it can be prov'd, that a Man and his Ancestors Unless in Case have, Time out of Mind, repair'd a Bridge, such Pre- of Prescription scription shall bind him and his Heirs, where it is done to the contra- ry. at first by Reason of some Tenure of his Lands; for par- ticular Persons shall not be bound by Prescription to re- pair, &c. if it be not in Respect of the Tenure of his Land, or of some Profit arising from the Bridge, *Co. 13. Rep.* in both which Cases he must repair, and not the County. So it is likewise of any Corporation Spiritual or Temporal. And where a Charge is, by Reason of Te- nure, every Owner of the Land is to be charged in Pro- portion. But a Lord of a Manor is not chargeable, meer- ly as such. *Bucknal's Case.*

If any Person hath Toll, or other Profit, for Passage Where a Per- son has a Pro- fit by a Bridge. over a Bridge, he ought to repair it: And if a Bridge was built at first to serve a private Purpose, and afterwards becomes necessary for the Publick, the Person who built it, and not the County, must repair it. *2 Inst. 701. Salk. 359. Mod. Cases 191.*

The Persons who repair Bridges must likewise re- pair the Way for 300 Feet at each End of the Bridge, *2 Co. 2.* and they may enter on the Lands contiguous, and lay Stone, Timber, and other Materials there, for Repairing of the said Bridge, without being prosecuted by the Owners of such Lands, because it is for the pub- lick Good. Those who re- pair the Bridge must repair the Way 300 Feet.

In Cases where Persons are bound to repair by Tenure, and the Party indicted found Guilty for not Repairing, the King may Pardon the Fine, but not the Offence; for that continues still, and he may be indicted again. *2 Co. 30.*

There are three Statutes which concern the Building, Three Stat. Repairing, &c. of publick Bridges, viz. about Bridges.

1. *Magna Charta*, by which it is enacted, That nei- *Magna Charta.* ther any Town, or Freeman, shall be distrained to make Bridges, or Banks, but such who antiently, and of Right have been accusom'd to do it; and this was Decla- rative of the Common Law. *2 Inst. 29.*

2. The



22 Hen. 8. c. 5.

2. The Stat. of 22 Hen. 8. c. 5. by which four Justices (*Quorum unus*) may in their Sessions enquire, hear and determine, concerning Bridges and Highways, adjoining within 300 Feet, and may charge those who ought to repair the same, by sending Process, and imposing such Penalties as they shall think fit.

Where Lands are given towards the Repair of Bridges, they must be Let by the Trustees for the best Rent, &c. without taking any Fine; and if the Trustees are negligent, the Justices may do it, by 22 Car. 2.

If it cannot be known who ought to Repair, upon an Enquiry made by the Grand Jury in Sessions, then they are to Present that the Bridge is in Decay, and that 'tis not known what Persons, Lands, or Tenants, or Bodies Politick, ought, or by Right, or antient Custom, us'd to repair the said Bridge, or any Part thereof.

When this is done, the Justices may call the Constables of every Parish, &c. and if they are not there, may send Warrants for them to appear at a particular Time and Place, to make a Tax.

But by Stat. 22 Hen. 8. the Justices without the Constables, or two able Inhabitants of every Parish, cannot make a Tax.

Common  
Course contra-  
ry to the Stat.

But contrary to that Statute, the usual Course is to charge every Hundred with a Sum in gross, and to send it to the High Constable of each Hundred, who send their Warrants to the Petty Constables to gather it; by Virtue thereof they assess the Inhabitants in particular Sums, and collect it, and pay it to the High Constables, who bring it to the Sessions.

But this being not warranted by Law, and besides in many Places more Money being levied than was really necessary for Repairing, and also because the Money was misemploy'd when levied, therefore was,

1 Ann.  
The Method of  
raising Money  
at this Day.

3. The Statute of 1 Ann. made, by which new Act the old Stat. 22 Hen. 8. is recited and confirm'd in all things, except such as are alter'd thereby.

And by this Stat. the Justices in Sessions, on such Presentment made, as before-mentioned, may assess every Town, Parish, or Place, within their Commission, in Proportion, as usually hath been assessed towards the Repair of the Bridge.

The Money thus assess'd is to be levied by the Constable or Headborough of every respective Parish; or by such as the Justices in Sessions shall appoint.

The Manner of levying it is, for the Headborough to demand it of the Party; and if 'tis not paid within ten

Days

Days after the Demand, he may levy it by Distress and Sale of his Goods, rendering the Overplus, the necessary Charges of the Distress being first deducted.

When 'tis levied, the Headborough must pay it to the High Constables of every Hundred, within six Days after 'tis collected; and they must pay it to such Persons as the Justices by a Sessions Order shall appoint to receive it; and this Payment must be within ten Days after the Receipt by the said Constables.

And then 'tis to be employ'd according to the Orders and Directions of the Justices, for and towards Repairing and Mending the Bridges.

And if any of the Officers neglect to assess, collect, or pay the Money, they forfeit 40s. for every Offence.

And if the Receiver, who is appointed by the Justices, pays any Money without their Order, he forfeits 5l. which must be applied to repair the Bridge.

No Fines upon Presentments, or Indictments, &c. shall be return'd into the Exchequer, but shall be paid to such Receiver.

All Matters concerning Repairing and Amending Bridges, shall be determin'd in the County where they are situated, and not elsewhere: And no Presentment or Indictment shall be removed by *Certiorari*, before Traverse and Judgment. All Matters concerning Bridges to be determin'd in proper County.

By the same Act the Justices may allow 3d. in the Pound, out of the Money collected, to any Person concern'd in the Execution of the Act. And if any Suit is brought for putting the Act in Execution, the Defendant may plead the General Issue, and give the Act of 22 Hen. 8. c. 5. and also this Act in Evidence; and if he has a Verdict, shall have double Costs. 22 Car. 2. c. 12. Sec. 4.

By this Act 'tis also further provided, That the Evidence of the Inhabitants of such Places, where the Bridges are in Decay, shall be taken and admitted at any Trial upon an Information, or Indictment, &c.

And lastly the Stat. of 23 Eliz. is repeal'd, and *Cardiff* Bridge shall be reputed a common Bridge, and repaired by the County of *Glamorgan*.

And the Wardens and Assistants of *Rocheſter* Bridge, shall be chosen yearly on *Friday* in the Week next after *Easter-Week*.

On an Indictment, for not repairing of Bridges, a Fine may be set by the Justices in Sessions on any Inhabitant of the County being made Defendant to the Indictment, who shall have Contribution from the rest, &c. 6. Mod. Rep. 307.

'Tis

'Tis not always necessary to set forth in the Indictment, *ad commune nocumentum* ; for if 'tis that *Legei Dom. Regis* cannot pass, *ad nocumentum eorum*, the Word *Ligei* takes in all the King's Subjects, and then *ad nocumentum eorum* amounts to as much as *ad commune nocumentum*.  
2 Leon. 183.

So an Indictment for pulling down a Bridge in *Via Regia* was held good, tho' it did not shew that it was a common Bridge. 4 Leon. 40.

'Tis safest for Justices to do all things relating to Bridges in open Sessions.  
Yet out of Sessions Four.

The safest Way for the Justices is to do all things which relate to Bridges in the open Sessions, as well where 'tis not known who shall repair, as where the Person obliged to repair is known : In which Case,

1. Four Justices (*Quorum unus*) may call before them the Constables of every Parish, or two Inhabitants thereof.

2. They may, with their Assent, tax every Inhabitant.

3. After the Tax made, they must write the Name of every Man taxed, in two Rolls indented.

4. They must appoint two Collectors for every Hundred, and give them one Part of the Roll under the Hands and Seals of the Justices.

5. By Virtue thereof the Collectors may distrain.

6. Justices may appoint two Surveyors to view the Repairs, and cause the Decays to be amended.

7. Both Collectors and Surveyors must account to the Justices, who, if they refuse or neglect, may send Process against them returnable in Sessions, and commit them.

Stat. 22 Hen. 8. doth not extend to Cinque Ports.

The Act of 22 Hen. 8. doth not extend to the Cinque Ports, or Members of the same, where the Warden, Mayors and Bailiffs elected, and Jurats of the same have such Power and Authority as Justices do in their Shires, &c.

None can be compell'd to make new Bridges where never any were before, but by Act of Parliament. 1 Roll. 368.

If one erect a Mill for his private Profit, and makes a new Cut for the Water to come to it, and a new Bridge over that Cut where the Queen's Subjects pass and repass, it must be repair'd by those who have the Mill, and not the County, 8 E. 3. B. R. Adjudg'd for Bow Bridge and Channel Bridge, against the Prior of Stratford ; and it is now repair'd by the City of London, which hath the Mill.

Where a Man and his Ancestors, or Predecessors, have used Time out of Mind to repair a Bridge, the King cannot



cannot acquit or discharge them thereof. *Fitz. G. A. bridgm. 94.*

Justices of Peace, where a decay'd Bridge is, may award Process into the County where the Party or Land chargeable is. *Dalt. 45.*

Indictment for not repairing a Bridge in *Nottinghamshire*, against all the Inhabitants of the County; they plead that *J. S.* ought to repair it *absque hoc* they; the Plaintiff replies, that they *absque hoc J. S.* Issue join'd in the last Traverse and try'd by a Jury of *Middlesex*, because they are all Parties: *Nota hoc*, and the Manner of this Pleading and Issue. *Rex versus Inhabitants de Com. Nottingham, M. 26 Car. 2. in B. R.*

Adjudg'd upon a Trial at Bar, on an Information for not repairing a common Bridge which the Defendants were bound to repair, that if a Manor is held by the Tenure of repairing a Bridge or Highway, which Manor afterwards comes into several Hands, that in such case, every Tenant of every Parcel, either of the Demesnes and Services, is liable to the whole Charge, but shall have Contribution of the rest. 'Tis true, the Lord of the Manor may agree with every Purchaser to discharge him from repairing; but such an Agreement will not alter the Remedy which the Publick may have; it only binds the Lord, who shall never apportion the Charge, and make the Remedy for the Publick more difficult: Neither shall he take away the Remedy by Alienations to Persons unable to pay, and tho' the Manor comes to the Crown the Charge shall continue. *1 Salk. 358. Mod. Cases 150.*

Any Inhabitant of the County may be a Witness, but the Jury must be of the next County. *1 Salk. 159. Mod. Cases 191, 306.*

Generally and of common Right the whole County is liable, and not the Owners of the Land adjoining.

If Evidence can be given, that a Man hath once repaired tho' not for many Years, yet those who have his estate in the Land shall be liable, because it shall be supposed to be done by reason of his Tenure, unless some other Cause can be shewed: And when a Charge is by reason of Tenure, every Owner of Land is to be charged proportionably.

Grand Juries ought to find who are to repair Bridges.

Justices of Peace are to award Process to get Bridges repaired. *Dalt. 45.*

A Bridge between two Counties is to be repaired between them. *Poph. 192. Roll. Abr. 368.*

If a Private Man build a Bridge, which after becomes of publick Use, then that makes it a County Bridge. *Black. 74, 75.*

### An Order of Sessions for repairing a Bridge.

*Essex, ss. Ad Generalem Quarterial' Session' Pacis, &c. Dom. Regis Tent. pro Com. praed. apud, &c. in eodem Com. Die, &c. Anno Regni Domini nost. Georgii, &c. primo Annoq. Dom. 1715.*

**W** Hereas the Inhabitants of, &c. in the County aforesaid, were at the last General Quarter-Sessions held for the said County, indicted for not repairing of a Bridge called, &c. then and now in Decay: And whereas upon Trial of the Traverse joined, and the County having Notice, it was then and there found, that the said Inhabitants ought not to repair the said Bridge; and the Jury having presented, That it cannot be made appear, that any particular Hundred or Parish, Lands or Tenements in the said County of, &c. ought of Right to repair the same, it is therefore now Order'd by this Court; and we do hereby according to the Form of the Statute in that Case made and provided, order and direct that the said Bridge shall be well and sufficiently repaired by the Inhabitants of the County of, &c. within which the said Bridge standeth; and that the Justices of the Peace, within their several Divisions, do take care of the Raising Monies for that Purpose. In Witness, &c.

A Warrant to the Constable, &c. to make a Tax for the Repairs of a Bridge pursuant to the aforesaid Order.

22 Hen. 8.  
Four Justices,  
Quorum unus.

*Essex, ss. W* Hereas at the General Quarter-Sessions of the Peate, held for the County aforesaid, at, &c. on, &c. last past, the Grand Jury presented the Bridge called, &c. in the Parish of, &c. in the said County, to be in Decay, and out of Repair; and the said Decays and Reparations were then and there order'd to be amended, and made good at the Charge of the County: Therefore are therefore in his Majesty's Name to command you the said Constable, and Inhabitants aforesaid, that you do immediately, upon the Receipt of this Precept, make a Tax

tion on all and every the Inhabitants of the Hundred, or Division of, &c. aforesaid, for the Raising the Sum of, &c. to be applied towards the Repairing of the Bridge aforesaid; and that you do bring the said Tax fairly written and subscribed by you, or some of you, unto us at the House of, &c. on, &c. next, for our Approbation, and that we may further proceed therein, as to Justice doth belong. Given, &c.

## A Warrant to collect the Rate and Taxation.

Essex, ss. **W** Hereas at the General Quarter-Sessions of 22 Hen. 8. the Peace, held, &c. the Bridge called, &c. situate in, &c. in the County aforesaid, was presented by the Grand Jury to be in Decay, and out of Repair; and the Decays and Reparations of the said Bridge, were by the Court order'd to be amended, and made good at the Charge of the County: And whereas we have lately issued out our Warrant to the Constable of, &c. to make a Taxation on all and every the Inhabitants in the said Hundred, for raising the Sum of, &c. towards the Repairing of the said Bridge: And the said Constable hath this Day, pursuant to our said Warrant, brought to us a Tax on the Inhabitants of the said Hundred, and we have, on Perusal thereof, allowed the same: These are therefore to require you forthwith to collect the several Sums of Money mention'd in the said Taxation, which is hereto annex'd, on the several Persons therein expressed; and that you do pay the same unto, &c. whom we have appointed General Receiver of the said Monies to be raised for the Purpose aforesaid, first deducting thereout the Sum of, &c. by us allow'd unto you for your Care and Pains in collecting and paying the same. And in Case of Refusal, or Neglect of Payment, by any of the Persons, of the particular Sums on them respectively taxed, that then you do certify unto us the Name or Names of the Person or Persons so refusing, with all convenient Speed. Given, &c.

## A Warrant to levy the 'Taxation by Distress where 'tis refused Payment.

Essex, ss. **W** Hereas A. B. of, &c. and C. D. of, &c. 22 Hen. 8. who have been duly appointed to collect the Monies imposed upon the Hundred of, &c. towards the repairing the Bridge of, &c. in the County aforesaid, have this Day made Complaint unto us, That E. F. and G. H. both of, &c. within the said Hundred of, &c. have refused to pay the  
L 2  
respective  
Four Justices.  
Quorum unus.



respective Sums of, &c. which they were severally taxed, for the Purpose aforesaid, though the same were legally demanded: These are therefore to require you to give Notice to the said E. F. and G. H. both of, &c. to come before us, to answer the Premises; and if they refuse so to do, that then you do levy the several Sums aforesaid, by Distress and Sale of the several Goods of the said E. F. and G. H. Given, &c.

### An Appointment of Collectors to receive Monies for Repairs of Bridges.

1 Ann.

**W**E A. B. C. D. &c. Esqrs; four of His Majesty's Justices of the Peace, for the County aforesaid, Quorum unus, have nominated and appointed, and by these Presents do appoint C. L. of, &c. and T. M. of, &c. both in the Hundred of, &c. in the County aforesaid, to be Collectors and Receivers of all Monies already raised and levied, or to be at any Times hereafter raised and levied, by Virtue of any Warrant from us within the Hundred of, &c. aforesaid, for and towards the Repairing of, &c. Bridge, in the Parish of, &c. in the County aforesaid, now presented, and order'd to be amended, so as they the said C. L. and T. M. do from Time to Time render and give to us true Accounts of the same, and the Disposal thereof. In Witness, &c.

### An Indictment where a Bridge is in Decay, and 'tis not known who shall repair it.

Essex, ss. **T**HE Jurors, &c. Do present, That there is a publick Bridge in the King's Highway, upon the \* River L. within the Parish of H. in the County of S. commonly called B. Bridge, and for many Years now last past it hath been very ruinous and in great Decay for want of Repair, so that the Subjects of our said Sovereign Lord the King are not able nor dare to pass, re-pass, and go in, upon, and over the said Bridge, either by themselves, or with their Horses, or Carriages, to the common Nuisance of all the Subjects of our said Sovereign Lord the King, whose Business it is by reason of their Affairs to pass there: And the said Jurors Do further present, That it is quite unknown what Persons, what Lands or Tenements or Body Politick, of Right, or from antient Custom, ought or have been accustomed to repair the said Bridge or any Part thereof.

\* Or upon the Water-course.

## Bridges. Building.

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If it is known who ought to Repair it by reason of Tenure, then the Indictment must be thus, after reciting that the Bridge is in Decay, *† and that R. B. by reason of Tenure, or of his Manor of A. with the Appurtenances in the County of S. ought to Repair and Amend the said Bridge, and that the same R. B. and all those whose Estate he hath in the same Manor of A. ought and have been accustomed to repair and amend that Bridge as often as there has been occasion, &c.* Godb. 346, 347.

*† If the Inhabitants of a particular Place ought to repair, then you say, and that the Inhabitants of (such a Place) and every of them for his Part ought to repair, uphold and maintain the said Bridge.*

**Buggery. Vide Felony.**

## Building.

**A**LL Houses built on old or new Foundations, *6 Ann. c. 31.* within the Bills of Mortality, after *May 1. 1708,* How Houses shall have Party-Walls between of two Bricks thick in *must be built after May 1, 1708, or forfeit 50l.* the Cellars and Ground-Stories, and thirteen Inches thick upwards from the Foundation, and eighteen Inches above the Roof; and no Cornice of Wood must be made in such Houses, but Front and Rear Walls of such Houses shall be built of Stone, or Brick, and be carried two Foot and a Half high above the Garret Floor. And if any House is built in the said Places, contrary to the Intent of the said Act, then the Owner of the House, and Head Builder, shall each of them forfeit 50*l.* one Moiety to the Informer, the other to the Poor of the Parish where the House is built, to be paid to the Church-Wardens for that Purpose.

This is to be levied by a Warrant from two Justices by Distress and Sale of the Offenders Goods.

The Conviction is to be upon Oath, or upon View of one or more Justices; and for want of Distress, the Party shall by the like Warrant be committed till Payment. Stat. *6 Ann. c. 31.*

By Stat. *11 Geo. 1. c. 28.* it is enacted, That all Persons erecting any House on an old or new Foundation in London or Westminster, or the Weekly Bills of Mortality, or in Mary la bone, or Paddington, or the Parishes of Chelsea, and St. Pancras (except Houses on London Bridge and on the Thames below Bridge) and who think it necessary to pull down any Partition-Wall between that and

## Building.

the adjoining House, shall (if the Owner of the adjoining House will not agree) give three Month's Notice in Writing of their Intention, that before the Party-Wall be pulled down, it may in a Month after Notice be viewed by four able Workmen, two to be named by the first Builder, and two by the Owner of the next House; and if either Party shall not name in three Weeks such Workmen, then the other shall name four to view the Party-Wall, and without Consent the same shall not be pulled down unless in the said Cases; and the major Part of the Workmen shall certify to the Quarter-Sessions that the Party-Wall is defective; and if any Person shall think himself aggrieved by such Certificate, the Justices are to summon before them one or more of the Workmen, and such others as they think fit, and examine them upon Oath; and thereon the Justices are to make Orders in the Premises, which shall be conclusive to all Parties without Appeal.

The Water falling from the Tops of the Houses built after 24 June, 1725. in the said Limits; and Water falling from Balconies and Penthouses shall be conveyed into the Channels by Party-Pipes on the Sides of the Houses, on Forfeiture of 10 l.

All Penalties imposed by this Act shall be sued for in Manner before-mentioned; and one Moiety shall be to the Informer, and the other to the Poor of the Parish.

Builders not having built their Houses according to the Act 6 Ann. cap. 31. for the better regulating Buildings, &c. who shall before the Twenty-ninth of September, 1727, make good the Defects, and pay to the Informers their Costs of Suit, which shall have been commenced (upon which no Conviction shall be obtained before May 10. 1725.) to be settled by three or more Justices, shall not be liable to the Penalties of the said Act: But if such Builder shall not make good such Defects, and pay the Costs so settled, he shall forfeit double the Penalty in the Act. And all Builders convicted before the said Tenth of May, who shall not make good the Defects before the Time before limited, shall, notwithstanding such Conviction, be further liable to the Penalties of the said Acts, to be recovered as by the said Acts are directed: But if the present Owners shall deny the first Builders within the limited Time, on Thirty Days Notice, to enter upon the Premises, and bring Materials to make good the Defects, then on Oath before two or more Justices of such Denial, the first Builder shall be discharged from the Penalties, and the present Owner shall be liable to pay the same.

Whereas



Whereas the Conviction for the said Forfeitures was to be only before one Justice of the Peace after the Twenty-fifth of June, 1725. it shall be before two Justices at the least. *But see the Act at large.*

## A Warrant against an Owner of an House, and Head Builder, for building contrary to the Acts.

London, *J.* **W** Hereas A. B. Owner of a New House 6 Ann. c. 31. in Fleet-street, was on the Day of the Date hereof, convicted before us, &c. by the Oath of W. D. of, &c. for that he the said A. B. did, after the First Day of May, which was in the Year 1708. together with G. D. of, &c. Mason, who did undertake to build the said House, accordingly build the same without Party-Walls between House and House, made either of Brick or Stone, &c. and did make, or suffer to be made, Mundillions, or Cornices of Timber, or Wood, under the Eaves of the said House; and did not build, or cause to be built, the Front and Rear-Walls of the said House, either with Brick or Stone; or carry the same above two Foot and Half high above the Garret-Floor of the said House; nor cope it with Stone or Brick, contrary to the Law in that Case made and provided; by Reason whereof each of the said Persons have forfeited the Sum of Fifty Pounds: These are therefore to require you forthwith to levy the respective Sums of Fifty Pounds, by Distress and Sale of the respective Goods of each of the said Persons; and that you pay one Moiety thereof to W. D. of, &c. who first informed us of the said Offence; and the other Moiety to the Church-wardens of the Parish of St. Dunstan's in the West, where the said Houses were erected, for the Use of the Poor thereof; and hereof fail not. Given under our Hands and Seals, &c.

## A Mittimus for Want of a Distress.

London, *J.* **W** Hereas T. D. Mason and Head Builder 6 Ann. c. 31. of a House newly erected in the Parish of St. Dunstan's in the West, in London, was lawfully convicted before us R. B. and G. G. &c. for that he, on the Sixth of August last past, did erect and build the said House, in the Parish aforesaid; and did make, or suffer to be made Mundillions, or Cornices of Timber or

**Bullion. Butchers.**

*Wood, under the Eaves thereof, contrary to the Statute in that Case made and provided, by Reason whereof he hath forfeited Fifty Pounds: And whereas the said Sum cannot be levied by Distress and Sale of the Goods of the aforesaid T. D. who for Want of such Distress is to be imprison'd: These are therefore to require you to convey the said T. D. to the common Gaol of Newgate, and to deliver him to the Keeper thereof, who is hereby required to keep him in his Custody, until Payment shall be made of the said Fifty Pounds, as the Law directs, &c.*

**Bullion.**

6 & 7 W. 3.  
cap. 17.

**P**ersons having unlawful Bullion shall be committed to Gaol by one Justice for six Months. *Note*; It is one Justice, or Wardens of the Company of Goldsmiths, &c. within the Bills of Mortality, and two Justices in any Town or Place.

Two Justices may grant a Warrant for Constable to search any Persons Houses suspected to have unlawful Bullion, and to break open Doors, Boxes, &c. to search for and discover the same.

Persons apprehending Clippers, Washers, Counterfeiters and Filers of the current Coin of this Kingdom, shall have Forty Pounds paid them within one Month after Conviction, on Certificate from Judge or Justices before whom convicted.

Persons guilty convicting two, shall be pardon'd; and an Apprentice making a Discovery, shall be made a Freeman.

**Burglary. See Felony.**

**Butchers.**

**T**HERE are some good Laws made for the better Regulation, and preventing the Abuses committed by Butchers.

Butcher selling  
Swines Flesh  
measled.

Butcher selling Swine's Flesh measled, or dead of the Murrain, on Conviction shall be amerced the first Time;

## 153

7. wide 51 Hen. 3.

the rest to the Poor. 3 Car. 1. c. 1.

2. C. Q.

This A<sup>t</sup> of 22 & 23 Car. 2. was reviv'd in 1 Jac. 22 & 23 Car. 2  
and afterwards continued by another A<sup>t</sup> in the 1 Jac. continued.

A Butcher is not to kill his Beasts in his Scalding-house, or within the Walls of the City of *London*, on Forfeiture of 12*d.* for every Ox, and 8*d.* for every other Beast.

4 Hen. 7. c. 3.

Butcher gashing any Hide, forfeits 1 s. 8 d. for every Hide, to be divided as above. Butcher Watering of Hides, except in *June, July* or *August*, or putting them to Sale being putrified, forfeits 3 s. 4 d. a Hide, as before.

Butcher is not to sell his Goods at unreasonable Rates,  
but for a moderate Profit, on Pain of forfeiting double the  
Value.

Butchers conspiring not to sell but at Prices agreed on; the first Offence is 10/. to the King; and if not paid within

## Butchers and

greeing not to  
sell but at their  
own Prices.



## Butter and Cheese.

within six Days after Conviction, must have Twenty Days Imprisonment; second Offence 20*l.* and if not paid then, the Pillory; the third Offence 40*l.* and if not paid, &c. lose one Ear. 2 & 3 *Edw. 6. c. 15.*

Butcher indicted for Buying and Selling of Cattle. *Latch* 192.

## An Indictment for selling unwholsome Meat.

Essex, *ff.* **T**HE Jurors, &c. do present that A. B. (of such a Place) in the County aforesaid Butcher, (such a Day and Year) at L. in the County aforesaid, fraudulently, subtilly and deceitfully exposed to Sale, unwholsome Flesh, (that is to say) Flesh putrified, corrupt and rotten, to the ill Example and great Danger of the Subjects of our said Sovereign Lord the King, and against his Peace, Crown and Dignity, &c.

## Butter and Cheese.

**J**ustices in Sessions may restrain the Retailing of Butter and Cheese; and none, except Innholders or Victuallers, are to buy Butter or Cheese to sell again, except by Retail in open Shop, Fair or Market, &c. and not above a Weigh of Cheese, or Barrel of Butter at one Time, on Pain to forfeit double the Value. 3 & 4 and 5 & 6 *Edw. 6.*

13 & 14 *Car. 2.*  
561. the Fir-  
kin, together  
64. Pot 61.  
together 141.

Every Kilderkin of Butter shall contain 112 *l.* neat, or above, of good Butter; every Firkin 56 *l.* beside the Weight of the Cask; every Pot 14 *l.* beside the Weight of the Pot. Good and bad Butter shall not be pack'd together, nor Whey-butter with Cream, nor salted with great Salt, nor more than needful, upon Pain that the Owner or Packer, &c. shall forfeit the Value of the Butter if exposed to Sale; and for not putting up such Quantities as aforesaid, or false Packing, and for every Pound wanting in every such Cask, or Pot, six Times the Value of every Pound. Every Cheese-monger shall deliver Butter as aforesaid; or in Default, shall make Satisfaction to the Buyer. No Cheesemonger, or other, shall re-pack Butter, on Forfeiture of double the Value of such

Such Butter. Every Person Packing up Butter for Sale, shall put it in good, sound, dry Casks, and shall set on every Cask the just Weight of the Cask, and where fill'd with Butter, the first Letter of Christian Name, and Surname at Length, with an Iron Brand, on Penalty of 10 l. for every Hundred Weight of Butter, and so proportionably for greater or lesser Quantities. Every Potter shall set the just Weight of the Pot on every Pot he sells for Butter, with first Letter of Christian and Surname at Length, on Penalty of 1 s. a Pot for every such Neglect. Farmer, &c. exposing to Sale Butter in Pots not mark'd as aforesaid, forfeits 2 s. for every Pot. All Offences against this Act are to be heard and determin'd at Quarter-Sessions for the County, City, &c. where committed, or in any Court of Record. Half the Penalties to the Poor, where, &c. to be paid to Church-wardens, &c. the other Half to the Prosecutor, besides double Costs, so as such Suit be within four Months after Sale of such Butter.

By Action, Indictment, or Presentment.

Importers of Butter and Cheese out of *Ireland*, liable to the same Penalties as Importers of Cattle (*viz.*) to have it divided between Seisor and Poor. Conviction by View of any Justice, Confession or one Witness on Oath before one Justice.

4 & 5 W. & M.

The Buyer having approved the Butter, the Seller is not afterwards liable to any Penalty in the Act 14 Car. 2. And the Buyer must then set his Mark, or Name at Length on the Cask: Afterwards, if the Seller shall open, or exchange the Cask, or if he pack up bad Butter, or mix bad with good, &c. he shall forfeit 20 s. for every Firkin, to be levied by Warrant of one Justice, on Conviction by one Witness on Oath or Confession.

Weigher, &c. of Butter and Cheese shall ship off all that belongs to *London* Cheesemongers, for which they shall have 2 s. 6 d. a Load; on Neglect shall forfeit 10 s. for every Firkin of Butter, and 5 s. for every Weigh of Cheese, to be levied as aforesaid. Weigher shall keep a Book to enter all Cheese and Butter brought into his Hands, with the Name of the Owner, Time, and Quantity, and shall make the same Entry when ship'd off, with the Name of the Vessels, to whom consign'd. Offender, on Conviction as aforesaid, shall forfeit for every Firkin of Butter 2 s. 6 d. for every Weigh of Cheese 2 s. 6 d. and for every other of the aforesaid Offences 2 s. 6 d. to be levied as aforesaid; for Want of Distress to be committed 'till paid; Penalty between Informer and Poor. Every Master of a Ship, &c. refusing to take in Butter, &c. forfeits 5 s. for every

## Butter, &c. Buttons, &c.

every Firkin of Butter, and 2s. 6d. for every Weight of Cheefe. Appeal to Quarter-Sessions. Party appealing first to give Bond to the Party accused of 20l. Penalty, with sufficient Surety to pay Costs, if not relieved on his Appeal. The Costs to be allowed by Justices in Sessions.

This Act excludes not Cheesemongers Free of London to send their own Vessels, or such as they shall Hire for their own Goods: Neither does it extend to the Counties of Lancaster and Chester, nor to the County of the City of Chester.

### A Warrant to levy the Forfeiture for mixing bad Butter with good.

13 & 14 Car. 2.  
cap. 26.

*Essex, ss.* **W** Hereas A. B. of, &c. Cheesemonger, hath been duly convicted before me, upon Oath of, &c. that he the said A. B. did mix in a Firkin bad Butter with good, after the same was sold to C. D. of, &c. and after the Mark of the said C. D. was set on the said Firkin, by Reason whereof he hath forfeited the Sum of Twenty Shillings, to be equally divided between the Poor of the Parish of D. where the said Offence was committed, and the Informer, according to the Statute in that Case made and provided: These are therefore in his Majesty's Name in Command you to levy the said Sum of Twenty Shillings, so forfeited as aforesaid, by Distress and Sale of the Goods of the said A. B. restoring to him the Overplus, if any such shall happen to be, after your Charges for taking the said Distress shall be deducted. Given, &c.

## Buttons and Button-holes.

No foreign  
Buttons to be  
imported.

**N**O foreign Buttons whatsoever shall be imported, on Penalty of forfeiting one Hundred Pounds, and Loss of Buttons. Moiety to the King, and Moiety to the Informer. Prosecution to be within a Year after Discovery made of the Offence committed. Justices may seize on Information; and they who sell, or expose to Sale such imported Buttons, forfeit for every Offence Fifty Pounds, per 13 & 14 Car. 2. c. 13. 4 & 5 W. & M. c. 10.



## Buttons and Button-holes.

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Every Person making or selling Buttons of Cloth, None to make Serge, or any other Stuffs, or of Wood only, shall for- or sell Buttons at Forty Shillings a Dozen to the King and Prosecutor, of Cloth, &c. 10 & 11 W. 3. c. 2. but this Statute is eluded by making Buttons of Horn, which are now worn by the common People.

Taylor making, selling, setting on, or binding on any Cloaths Cloth or Stuff Buttons, or Button-holes, &c. No Taylors to forfeit Five Pounds, to be levied by Distress, &c. by make or set on Warrant from two Justices. Appeal to Quarter-Sessions, Buttons of Cloth, &c. to pay Costs if not relieved. 8 Ann. c. 6.

No Taylor, or other Person shall make, sell, set on, use or bind, or cause to be, &c. on any Cloaths or wearing Garments, any Buttons or Holes made or bound with Cloth, Serge, &c. on Penalty of Forty Shillings for every Dozen of such Buttons or Holes; and so in Proportion for a greater or lesser Quantity. Conviction by Oath of one Witness. Not to extend to Velvet. Any Person being in any Gaol, or within the Rules and Liberties of them, offending as above, shall be subject to the same Penalties. Prosecution in three Months. Penalty to the Poor of, &c. and to the Informer; Charges of Conviction being first deducted. On Refusal of Payment for Fourteen Days after Conviction, to be levied by Distress, &c. For Want, to be committed for three Months to Gaol, and be kept to hard Labour. Appeal to Quarter-Sessions. Cloaths exposed to Sale in any Fair, or Shop, &c. shall be forfeited and seized, and applied to the Uses aforesaid, and to be recover'd as aforesaid. 4 Geo. cap. 7.

Taylor, causing Servant or Apprentice to make such Cloaths, shall be liable to the Penalties aforesaid, if intitled to the Money for making them. 4 Geo. c. 7.

No Person shall wear any Cloaths or Garments with Buttons or Button-holes made of Cloth, Serge, Stuffs, &c. under the Penalty of Forty Shillings per Dozen. No Person shall wear Buttons or Holes made of Cloth, &c. Conviction by the Oath of one or more Witnesses, or Confession before one Justice. Penalty to be levied by Distress and Sale of the Offenders Goods; one Moiety to Informer, the other to the Poor of, &c.

This Act not to extend to Velvet, and Prosecution must be in a Month; Persons aggrieved may appeal to the Quarter-Sessions, giving eight Days Notice to Prosecutor. 7 Geo. cap. 12. The Act to be deemed a publick Act. 7 Geo. c. 12.

A Warrant

## A Warrant to levy a Forfeiture for setting on Cloth Buttons, &amp;c.

4 Geo. c. 17.

Middlesex, ss.

**W** Hereas A. B. of, &c. hath this Day made Information on Oath before me, that C. D. of your Parish, Taylor, hath lately made or caused to be made, one Cloth Coat for, &c. with Buttons (or Button-holes) of Cloth, Serge, Stuff, &c. contrary to an Act of Parliament made in the fourth Year of King George whereby he hath forfeited the Sum of Forty Shillings per Dozen for the Offence aforesaid: These are therefore to Command you to ask, demand and receive of the said C. D. five Pounds, being the Sum his Forfeiture amounts to, for three Dozen of Buttons, &c. and if the same be not paid in Fourteen Days, that then you levy it by Distress and Sale of his Goods, one Moiety whereof you are to give to the said A. B. the Informer, and the other Moiety apply to the Use of the Poor of the Parish of, &c. aforesaid. And if the said C. D. hath no Goods, whereof a sufficient Distress may be taken, then you are to convey him the said C. D. to the common Gaol of, &c. there to remain, and be kept at hard Labour for the Space of three Months. Given, &c.

## A Warrant to levy the Penalty for Wearing Cloth Buttons, &amp;c. on Cloaths.

7 Geo. c. 12.

Middx. ss.

**W** Hereas Information hath been this Day made on Oath before me, A. B. Esq. &c. by C. D. of, &c. that E. F. within your Parish hath lately worn one Cloth Coat, with Buttons made of Cloth contrary to a Statute in that Case made: These are therefore to require you, to levy by Distress and Sale of the Goods of the said E. F. the Sum of, &c. the Penalty he hath forfeited by the Offence aforesaid, pursuant to the said Statute, being after the Rate of 40s. per Doz. for the Buttons worn; one Moiety whereof you are to pay to C. D. on Oath the said E. F. was convicted of the Offence, and the other Moiety apply to the Use of the Poor of the Parish, &c. Given, &c.

## Calicoes, &amp;c.

**B**Y Stat 7. G. 1. c. 7. If any Person shall use or wear in any Apparel, any printed, painted, stained or dyed Calicoe, being convicted thereof, by the Oath of one or more Witnesses before a Justice of Peace, they shall forfeit the Sum of 5*l.* to the Informer; and upon Complaint within six Days after the Offence, the Justice is to summon the Party accus'd, and proceed to Examination, and on due Proof, cause the Penalty to be levied by Distress and Sale of Goods, &c.

If any Mercer or Draper shall expose to Sale any such Calicoe, or any Bed, Chair Window-curtain, or other Furniture, made up or mix'd with Calicoe (unless it be for Exportation) every such Person shall forfeit the Sum of 20*l.* and Persons using the same are liable to the like Penalty: But Calicoes made into Furniture in Families are exempted; and this Act shall not extend to Calicoes dyed all blue.

One Moiety of the Penalties inflicted where they exceed 5*l.* shall be paid to the Informer, and the other to the Poor, recoverable by Action of Debt, &c. within six Months.

Cards and Dice. See Gaming.

## Carders, &amp;c.

**C**arders, Spinsters, Weavers, Fullers, Sheermen, and Dyers, not performing Duty in their Occupations, shall yield to the Party grieved, double Damages; to be committed till Payment. One Justice to hear and determine Complaints. + Edw. 4. c. 1.

Carders, Kembers, Sorters, Spinsters, or Weavers, conveying away, imbezilling, or detaining any Wool or Yarn, deliver'd by Clothier, or any other Person, shall give the Party grieved such Satisfaction as two Justices, Mayor, &c. shall think fit; if not able, or unwilling to make Satisfaction, for the first Offence to be whipp'd, or set in the Stocks in some Market-Town, or in any Town where Offence is committed; second Offence to incur the like or such further Punishment by Whipping, 7 Ja. 1. c. 7.  
Carders, &c.  
imbezilling  
Wool, &c.



## Carriers and Carriages.

Whipping, &c. as Justices shall think proper. Conviction by one Witness on Oath, or Confession.

## Carriers and Carriages, &c.

3 Car. 1.

**C**ARRIER, Waggoner, &c. or Drover, travelling on the Lord's Day, about their Business, shall forfeit 20*s.* for every Offence, to be levied, by Distress and Sale, by Warrant from one Justice, for the Use of the Poor.

29 Car. 2. c. 7.

Justices may allow a third Part to Informer. Conviction by View of a Justice, Confession, or two Witnesses. Prosecution in six Months.

Justices of Peace in their Sessions have a Power to fix and settle the Prices of Carriage of Goods by Land, by any common Carrier, which being certified to the Mayors and Officers of each Market-Town within their Jurisdiction, they are to fix 'em at the publick Market-place, for publick Notice, by 3 & 4 W. & M. c. 12.

If a Carrier presume to take more, he forfeits 5*l.* to be levied by Distress, by Warrant from two Justices, to the Use of the Party grieved.

No Waggon to go with above six Horses.

If any Carrier shall travel with Waggon, Wain, Cart, or Carriage, with above six Horses, Oxen, or other Beasts (except it be for carrying Hay, Straw, Corn, Coal, Timber, Materials for Building, Stone, Ammunition, or Artillery) he shall forfeit 5*l.* to be levied by Distress and Sale of any of the said Beasts, in three Days; to be employed one Moiety for the Repairing of the Highways, and the other to the Prosecutor, being an Inhabitant in the Parish where the Offence was committed, by Stat. 9 Ann. c. 18.

Persons employ'd in the Driving, or assisting in the Driving with more than six Horses are liable to the same Penalty, by Stat. 9 Ann. c. 18.

Any Person may seize and distrain.

The same Stat. enacts, That any Person or Persons, may discover and Prosecute them who Draw with more than six Horses, &c. and seize and distrain all or any of the Horses, &c. and deliver the same to the Surveyors of the Highways, or other Officer of the Place; and if the 5*l.* be not paid in three Days, the Distress is to be sold, and the Money deliver'd to the Justice to be distributed.

Surveyors

Surveyors of the Highways, or other Parish-Officers, refusing or neglecting to deliver the Money by them received to the Justice, forfeit 20*l.* to be levied by Distress and Sale; for want of Distress, to be committed to the common Gaol 'till Payment. One Moiety of the Forfeiture to the Informer, the other to be laid out in repairing the Highways. *Stat. 9 Ann. c. 18.*

If any Person refuse or neglect to carry a Horse, &c. so distrain'd to the Surveyor, or other Parish-Officer, he likewise forfeits 20*l.* to be levied and disposed of *supra.*

Surveyors of Highways neglecting to put 6 *Ann.* or any other Law for Repairing Highways, in Execution, forfeit 5*l.*

Surveyors of Highways not putting the Acts in execution.

N. B. The Act made 13 & 14 *Car. 2.* intitled, An Act for providing Carriages, by Land and by Water, for the Use of his Majesty's Navy and Ordnance, and revived *Anno 1. Ja. 2.* and continued 4 & 5 *W. and M.* for seven Years, from—13, 1692, and continued by 11 & 12 *W. 3. c. 13.* for seven Years, from 29 *Sept. 1700.* As also the Act made 1 *Ja. 2. c. 10.* for providing Carriages, &c. for the King, are expired, and therefore there needs no more be said of them in this Place.

*Stat. 13 & 14 Car. 2. expir'd.*

By *Stat. 1 Geo. no* travelling Waggon, &c. with any Carthen, &c. (other than before excepted) should at any Time be drawn in any common Highway with above five Horses, &c.

But by *Stat. 5 Geo. 1.* this Act is alter'd, and 'tis enacted, That no travelling Waggons, &c. for Hire, shall be drawn with more than six Horses, either in Length, in Pairs, or Side-ways; and no travelling Cart to be drawn with more than three Horses; upon Pain of forfeiting the Horses above six in the Waggon, and three in the Cart, with all Geers, Accoutrements, &c. to the Use of the Seizor.

The Horses, &c. are to be deliver'd to the Constable, or other Parish Officer; and Oath to be made of the Offence before a Justice of Peace, who is thereupon to give his Precept to the Constable, &c. to redeliver the Horses seiz'd.

Travelling Waggons are to be bound with Streaks or Bands, two Inches and a Half in Breadth, at least when drawn, or not to be drawn with above three Horses, on Pain of forfeiting all the Horses exceeding that Number, and the Geers, &c. Streaks set on with Rose-headed Bands, liable to the same Penalty. Persons hindring the Use of Horses, to be committed for three Months,

Travelling Waggons to be bound with Tire 2 Inches and a half broad.

## Carriers and Carriages, &c.

and forfeit 10*l.* to be levied on their Goods, if not paid in three Days, by Warrant from one Justice. Carriages employ'd in Husbandry, and carrying Cheese, Butter, or any one Tree, or Piece of Timber, or any one Stone, or Block of Marble; Caravans, and cover'd Carriages of Noblemen and Gentlemen, for their private Use, or Timber, Ammunition, or Artillery, for His Majesty's Use, are excepted.

Persons prosecuted for any Matter done in Execution of this Act, may plead the General Issue, and give this Act and the Special Matter in Evidence, and recover full Costs.

Persons in London or Westminster, or within 10 Miles of the same, shall not carry above seven Hundred and a Half of Bricks, &c.

By Stat. 6 Geo. c. 6. it is enacted, That no Person shall carry in the Cities of *London* or *Westminster*, or within ten Miles thereof, in Carts or Waggon, having their Wheels bound with Iron, at any one Load any more than seven Hundred and a Half of Bricks, one Chalders of Coals, twelve Sacks of Meal, of five Bushels to the Sack, and twelve Quarters of Malt: And if any Person should do contrary, he forfeits one of the Horses, with the Gear, &c. to any one who will seize the same. The Penalties to be levied and applied in the same Manner as those by 5 Geo. relating to Carriages drawn on the Highways.

Oath to be made of the Offence before a Justice of Peace, who, on Conviction, is to order the Forfeiture to the Seizor, &c.

There was also a good Act of Parliament made 6 & 7 W. 3. c. 16. whereby the Justices of Peace of the Counties of *Oxford*, *Berks*, *Bucks*, *Wilts*, and *Gloucester*, in their Quarter-Sessions, or any five of them, were enabled to make Orders for preventing Abuses in the River of *Thames* and *Isis*; and to Assess the Rates of Water-Carriage in Barges, Boats, &c. but that Act is also expired. But by an Act made 3 Geo. 1. the Power of reforming Abuses and of settling the Rates of Water-Carriage on the *Thames* &c. is vested in the Commissioners therein named for nine Years. *Vide* the Act.

A Warrant to levy the Forfeiture of  
Carrier, taking more for Carriage of  
Goods than the Rates assessed by Jus-  
tices.

3 & 4 W. & M. Essex, *ss.* **W** Hereas it hath been duly proved before W. B. and E. S. Esquires, two of His Majesty's Justices, &c. That A. B. of, &c. Carrier, has



insisted upon, and obliged C. D. of, &c. to pay the Sum of, &c. for Carriage of two large Trunks, from, &c. to, &c. weighing, &c. being after the Rate of &c. per Hundred, which is, &c. more than the Price limited, and assessed by the Justices of the Peace, in their last Easter Sessions, for Carriage of Goods: These are therefore to require you to levy the Sum of 5 l. on the Goods and Chattels of the said A. B. by Distress and Sale thereof, which he hath forfeited by the Offence aforesaid; and that you do pay the same, when levied, to the said C. D. who is the Party grieved. Given, &c.

## An Information against a Person drawing a Waggon with more than six Horses.

*Effex, ff.* The Information of A. B. of &c. taken before W. B. Esq; one of His Majesty's Justices of the Peace, for the said County of, &c. this Day and Year, &c.

**W**HO saith on his Oath, That upon, &c. last past, 6 Ann. he the said A. B. as he was going from, &c. to, &c. saw a Waggon belonging to C. D. of, &c. in the said County, Carrier, travel through the Parish, of, &c. in the main Road, some Distance from any Hill drawn by seven Horses at length, which said Waggon was laden with Goods of, &c. and was going for London.

Jurat' coram me Die  
& Anno supradict'  
W. B.

## A Warrant to levy the Forfeiture.

**W**Hereas A. B. of, &c. hath this Day made Oath before me, That upon, &c. of this Instant, &c. he saw a Waggon belonging to C. D. of, &c. in the said County, Carrier, travel through the Parish of, &c. drawn by seven Horses, contrary to an Act of Parliament lately made, whereby he hath forfeited the Sum of 5 l. of, &c. one moiety thereof to the said A. B. as Prosecutor, and the other Moiety to be employ'd in Amending the Highways in the said Parish of, &c. These are therefore in His Majesty's Name to Command you, and every of you, upon Receipt hereof to levy the said Sum of 5 l. by Distress of all, or any of

## Carriers and Carriages, &c.

of the Horses that drew the said Waggon, as aforesaid, to be kept for the Space of three Days at the Charges of the Owner thereof, and then if they are not redeemed, you are to appraise and sell the same, and bring the Monies arising by such Sale, to me, or some other Justice of the Peace to be distributed as above, according to the Direction of the Act of Parliament in that Case made and provided. Given, &c.

### A Warrant for Delivery of Horses seized to the Seizor, for travelling with Waggon contrary to Law.

5 Geo.

Essex, *ff.* **W** Hereas A. B. of, &c. hath this Day made Information on Oath before me W. B. Esq; one of His Majesty's Justices of the Peace for the County aforesaid, That C. D. Waggoner, on, &c. last past in the Highway leading from, &c. to, &c. travell'd with a Waggon drawn with five Horses, the Wheels whereof were bound with Tire not of the Breadth of two Inches and Half, as a late Act of Parliament directs, whereby he forfeited all the Horses above the Number of Three, and the same have been seiz'd, and deliver'd over to the aforesaid Constable of, &c. These are therefore to Command you the aforesaid Constable, to redeliver the Horses above-mentioned to be forfeited, being Two in Number, and all the Geers, &c. to the said A. B. the Seizor, for his sole Use, he paying the reasonable Charges for Keeping, &c. Given, &c.

### A Warrant to levy the Forfeiture for carrying more Coals than allowed by Law.

6 Geo.

London, *ff.* **W** Hereas Information hath been made on Oath this Day before me, A. B. Esq; one of His Majesty's Justices of the Peace for the County of Middlesex, by E. F. of, &c. that C. D. Cartman, of, &c. last, in the City of London, particularly in, &c. part of the said City, travell'd with a Cart, the Wheels whereof were bound with Iron, having therein for Loading, a Chaldier and a Quarter of Coals, &c. contrary to the Statute made in the Sixth Year of King George: These are therefore to Command you (the Constable) to deliver to the said E. F. the Informer, for his sole Use, one of the Horses belonging to the said Cart, with the Geers, Bridles, and

ers therewith used by him the said E. F. seized as and for a forfeiture for the Offence aforesaid, according to the Direction of the Statute. Given, &c.

Casual Death. See Homicide.

## Cattle.

Three Justices (*Quorum unus*) may enquire by Oaths of twelve Men, Examination of Witnesses, &c. of the malicious Maiming of any sort of Cattle. 22 & 23 Car. 2. c. 1.

Cattle, dead or alive, (except for Provision for the Vessel) may be seiz'd by Constable, if imported, and may be kept for forty-eight Hours in some convenient Place, within which Time, if Owners, or any for them, do not make it appear to some Justice, by Oath of two Witnesses, that the same were not imported from beyond Sea, then the said Cattle shall be forfeited, one Moiety for the Poor, the other to the Informer, or Seizor. Exception for Cattle from the Isle of Man, not exceeding 600 Yearly. 18 Car. 2. c. 2. Cattle imported may be seized.

By this Stat. any may seize Cattle imported. Inhabitants of any Parish, &c. where Cattle are imported, in Default of Seizing, shall forfeit 100*l.* for the Use of the House of Correction within the County, &c. Every Ship, &c. with Tackle, &c. bringing over Cattle, dead or alive, shall be forfeited, and sold within a Year after the Offence committed. Masters, Mariners and Seamen, concern'd in the Importation, sent to Gaol for three Months. Confession before one Justice, Mayor, &c. 20 Car. 2. c. 7.

By this Stat. Seizors of Cattle, &c. imported, except as before excepted) shall within six Days after Confession, and Forfeiture thereof, cause the Cattle to be kill'd. Hides and Tallow of the great Cattle, Sheep, and Swine for the Use of the Seizor, the Remainder for the Poor; to be distributed by the Church-Wardens and Overseers. Seizor, or Parish-Officer, neglecting their duty forfeit 40*s.* for every great Cattle, and 10*s.* for every Sheep and Swine, to the Poor and Informer, by Distress and Sale, by Warrant from one Justice. Confession by Confession, View of Justice, or one Witness (other than Informer) upon Oath; for want to be committed to Gaol for three Months, without Bail, &c. Cutton or Lamb imported, if expos'd to Sale, subject to the same Penalties. 32 C. 2. c. 7.



3 & 4 Edw. 6.  
c. 19.

Cattle must be  
bought in open  
Fair and Mar-  
ket.

Cattle must be bought in open Fair or Market, and they must not be sold again in the same Fair or Market, on Forfeiture of double the Value.

Cattle bought in *Smithfield*-Market, if brought into the same Market again to be sold, shall be seized as forfeited for the Use of the Lord Mayor, &c.

5 & 6 Edw. 6.  
c. 14.

Buying and Selling alive, within five Weeks afterwards, the Forfeiture is double the Value; He must keep them for that Time in some Pasture.

Offence must  
be inquir'd in-  
to at Quarter-  
Sessions.

This Offence is to be determin'd in Quarter-Sessions by Inquisition, Bill, Presentment, Information, or Proof of two Witnesses upon Oath. Justices may appoint one Moier for the King, and award a *Fieri facias* or *Capias* to the Prosecutor for the rest.

Must be prose-  
cuted in two  
Years.

Offence must be prosecuted within two Years after it is committed.

Drovers licensed by three Justices, (*Quorum unus*) may buy Cattle to be sold at a reasonable Price in Fairs and Markets, forty Miles Distance from the Place where they bought them. 5 Edw. 6. c. 14.

There was an Action brought in the Sheriffs Court in London, upon the before-mention'd Statute, and it was held, that it being a Penal Law, the Prosecution should be as directed by the Statute, viz. at the Sessions. *Laid* 192.

In an Information brought for buying Cattle, and selling them again in the same Market, the Judgment must be *quod capiatur*, and not *in misericordia*, because it is Contempt, and punishable by Imprisonment. *Godb.* 349.

He who keeps  
120 Sheep, for  
every sixty  
Sheep must  
keep one Cow,  
&c.

He who keeps 120 Sheep on his Pastures, which are fit to Depasture Milch-Cows, and which are not common, shall for every sixty Sheep keep one Milch-Cow; and for every 160 Sheep, shall rear one Calf. The Penalty is 20s. per Month for not keeping a Cow, and 20s. for not rearing a Calf; one Half to the King, the other to the Party who prosecutes within a Year after the Offence.

Justices in Sessions have Power to hear and determine the said Offences. 1 & 2 P. & M. c. 3. 13 Eliz. c. 25. 7 Ja. 1. c. 8.

25 Hen. 8. c.  
13. None to  
keep above  
2000 Sheep at  
once.

No Man shall keep in his Possession, at one Time above 2000 Sheep, to be accounted after the Rate of Six score to the Hundred; the Penalty is 3s. 4d. for every Sheep above that Number.

Prosecution must be within a Year; and it may be before Justices in Sessions. Penalty to be divided between the King and Prosecutor.

But a Person may keep as many Sheep as he can upon Lands of his own Inheritance; or as Tenant in Dower, or by the Courtesy.

Lambs are not to be accounted Sheep till *Midsummer* Twelve-months after their Fall.

If any one has more than 2000 Sheep, either as Executor, or by express Devise, or by Marriage, they shall not incur this Penalty, so as within one Year afterwards they put off as many as would reduce the Number to 2000 at the End of the Year.

Also an Infant, who hath above that Number devised to him, shall not be punished during his Nonage, nor any Person for him.

No Man shall take above two Farms, except he dwell in the same Parish where his Farms are, under Penalty of 3s. 4d. per Week, between the King and Prosecutor; but the Prosecution must be at the Assises, and not at the Sessions.

Persons carrying Sheep over Sea, or procuring them to be carried, forfeit all their Goods for ever; one Moiety to the King, his Heirs, &c. the other to the Informer, and withal shall suffer Imprisonment for a Year; and after that have his left Hand cut off, and put up in the Market-Place: Second Offence Felony. Justices at Quarter Sessions may hear and determine Offences against this Act. 8 El. c. 3.

Information on 5 & 6 Edw. 6. c. 14. for buying live Cattle, and felling them again within five Weeks.

Essex, ss. **A.** B. (who sues as well for our Sovereign 5 & 6 Ed. 6. c. 14. Two Witnesses.) Lord the King, as for himself in this particular) comes here into Court, in his proper Person, on the Fifth Day of January, in the Eighth Year of the Reign of our said Sovereign Lord the King, and as well for our said Sovereign Lord the King, as for himself, gives this Court to understand, and be informed that C. D. late of H. in the County aforesaid, Butcher, on the Twenty-eighth Day of November, in the Year aforesaid, and at divers other Days and Times, between the said Twenty-eighth Day of November, and the Day of exhibiting this Information at H. aforesaid, in the County aforesaid, bought of several Persons at present unknown to the said A. B. who as well, &c. twenty Oxen, each Ox of the Price of Fourteen Pounds, and that the said C. D. did not keep and depasture the

same live Oxen, for the Space of five Weeks in his own Houses, Lands, Farms, or in such Lands where he had Herbage or Common of Pasture, by Grant or Prescription, nor in any of them, but the said C. D. within the Time aforesaid last mentioned, sold the said Twenty Oxen alive at H. aforesaid, in the County aforesaid, contrary to the Form of the Statute in such Case made and provided, by which Means the said C. D. hath forfeited 190*l.* of lawful Money of Great Britain, that is to say, double the Value of the said Cattels by him so bought and unlawfully sold again in the Manner and Form aforesaid; whereupon the said A. B. who as well, &c. prays the Advice of the Court in the Premises, and due Process of Law against the said C. D. to be made in this Particular, and that be the said A. B. who as well, &c. may have a Moiety of the said Forfeiture, according to the Form of the Statute aforesaid, &c.

### An Indictment for pulling Wool from live Sheep.

Essex, *f.* **T**HE Jurors, &c. do present that A. B. late of H. in the said County, Shepherd, on the 18th Day of May, (in such a Year) broke and entered the Close of R. B. at H. in the County aforesaid, and pulled off the Wool of twenty Sheep, of the Value of 20*s.* of the Goods and Chattels of the said R. B. at H. aforesaid, in the County aforesaid, from the Bodies of the said Sheep, then and there being, and took and carried away the Wool aforesaid, so feloniously pulled off, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

22 & 23 Car.2.  
cap. 11

Those that maim Cattle in the Night, shall forfeit treble Damages.

### Certiorari.

Certiorari,  
what it is.

**T**HIS is a Writ to remove a Record from an inferior Court; and sometimes it is issued out of the Chancery, and then it is returnable in *Cancellaria nostra*; sometimes out of the King's Bench, and then it is *Nobis mittatis*; and sometimes out of the Common Pleas, and then



then it is *coram Justiciariis nostris de Banco*; and the Justices to whom it is directed, must make a Return accordingly.

If deliver'd after the Jury are gone out to consider of their Verdict, it is too late; for it cannot be deliver'd after the Jury is sworn. *P. 9 W.* And yet it will lie after Conviction, and before Judgment; but this must be understood where a Writ of Error doth not lie.

Upon a Conviction at the Assises, if the Judge Doubt of the Judgment to be given, he may remove the Record into *B. R.* by *Certiorari*. *Mich. 2 Ann.* Though a *Certiorari* is seldom granted to remove Indictments found at the Assises; but it may be granted for some Special Cause, and in all Cases where it is not expressly denied by some Statute. *3 Mod. 95.*

This Writ may either be to remove an Indictment, or the Tenor thereof, or a Recognisance, &c. and it removes the whole Record, and therefore no *Alias Certiorari* is to be allowed. *Style 359.* In *London* the Tenor of the Record only is return'd on it, in other Places the Record it self. *Sid. 155, 230.*

But it is not to be allowed, unless the Party indicted be bound with Sureties (such as the Justices do approve) to pay the Prosecutor such Costs and Damages as the Justices shall assess within a Month after Conviction. *21 Jac. 1. cap. 18.*

Not to be allowed unless Party be bound with Sureties.

And, by a later Statute, it is not to be granted in Term-time, but upon Motion in Court; and the Party who desires it, must find Bail, *viz.*

How granted in Term.

Two *Manucaptors* before one or more Justices of the Peace, in *20 l.* to plead to the Indictment, and at his own Charge to procure the Issue to be joined, and to be tried at the next Assises in that County where the Indictment was found, after the Return of the *Certiorari*, if not in *London, Westminster* or *Middlesex*; but if in any of those Places, then the next Term after the *Certiorari* granted; and if such Recognisance is not given before the *Certiorari* is allowed, they may proceed, though delivered.

5 & 6 W. & M. c. 5.

The Recognisance and *Certiorari* must be certified in *B. R.* and there filed, and the Name of the Prosecutor indorsed.

If the Party desiring the *Certiorari* be convicted, then *B. R.* may give Costs; and if not paid within ten Days after Demand, then on Affidavit made of the Refusal, an Attachment goes, &c. and the Recognisance not to be discharg'd 'till the Costs are paid.

In

How in the  
Vacation.

In Vacation any Judge of *B. R.* may grant it. He must indorse his Name, and the Name of the Party desiring it; and before the Allowance, the Party must find such Sureties as aforesaid.

And by a subsequent Statute, a Recognisance taken before a Judge of *B. R.* with like Condition as in the former Act, which the Judge must mention on the Back of the Writ, and subscribe his Name, shall be as good as if taken before a Justice of Peace in the proper County.

When an Appeal lies to the Sessions, no Order shall be removed by *Certiorari*, till after the Appeal had; if it be, it shall be sent back by *Procedendo*.

But now by a Statute 5 Geo. 2. it is enacted, That no *Certiorari* shall be allowed, to remove any Judgment, or Order of any Justice or Justices of the Peace, unless the Party or Parties prosecuting such *Certiorari* before the Allowance thereof, shall enter into a Recognisance, with sufficient Sureties before one or more Justices of the Peace of the County or Place, or before the Justices at their General Quarter-Sessions, or General Sessions, where such Judgment or Order shall have been given or made, or before any one of his Majesty's Justices of the said Court of King's Bench, in the Sum of Fifty Pounds, with Condition to prosecute the same at his and their own Costs and Charges, with Effect, and without any wilful or affected Delay; and to pay the Party or Parties in whose Favour, and for whose Benefit such Judgment or Order was given or made, within one Month after the said Judgment or Order shall be confirm'd, their full Costs and Charges, to be taxed, according to the Course of the Court where such Judgments or Orders shall be confirm'd; and in Case the Party or Parties prosecuting such *Certiorari* shall not enter into such Recognisance, or shall not perform the Conditions aforesaid, it shall and may be lawful for the said Justices to proceed and make such further Order or Orders, for the Benefit of the Party or Parties for whom such Judgment shall be given, in such Manner as if no *Certiorari* had been granted.

The Recognisance or Recognisances to be taken as aforesaid, shall be certified into the Court of King's Bench at *Westminster*; and there filed with the *Certiorari*, and the Order or Judgment removed thereby; and if the said Order or Judgment shall be confirm'd by the said Court, the Persons intitled to such Costs for the Recovery thereof, within ten Days after Demand made of the Person or Persons who ought to pay the said Costs, upon Oath made of the making such Demands, and Refusal of Payment thereof, shall have an Attachment granted against him or them.

them by the said Court, for such Contempt; and the said Recognisance so given upon the allowing of such *Certiorari*, shall not be discharg'd until the Costs shall be paid, and the Order so confirm'd shall be complied with and obeyed.

Justices ought to make a Return to a *Certiorari*, tho' the Party will not give Bail, and the Statute demands it to be previously given. 1 Sid. 70. Black. 77.

The Condition of the Recognisance, where the *Certiorari* is brought to a Justice of Peace, and not to a Judge of B. R.

**T**HE Condition of this Recognisance is such, That whereas the above-bound A. B. hath prosecuted a *Certiorari*, returnable, &c. to remove into the King's Bench an Indictment found against him, at, &c. for, &c. If therefore the said A. B. shall plead to the said Indictment, so removed as aforesaid, so as Issue may be joined upon the same; and shall likewise at his own Charge procure the said Issue to be tried at the next Assises after the Return of the said *Certiorari*, to be held for the County of, &c. where the said Indictment was found, then this Recognisance to be void, &c.

The Return of a *Certiorari* endorsed on the Back of the Writ.

**T**HE Execution of this Writ appears in the Schedule hereunto annex'd.

A. B. Esq;

The Schedule or Certificate of the Record, in a Piece of Parchment by it self, and filed to the Writ.

**I** A. B. Esq; one of the Keepers of the Peace, assigned to keep the Peace of our Sovereign Lord the King, in the County of Essex, and also to hear and determine divers Felonies, Trespasses, and other Offences committed in the same County, do, by Virtue of this Writ to me delivered, certify the Indictment, whereof Mention is made, together with all Things



\* Or into the  
King's Bench.

*Things touching the same, into the Chancery \* of our said Sovereign Lord the King, distinctly and openly, under my Seal. In Witness whereof, I the said A. B. have set my Seal to these Presents. Dated, &c.*

It lies to the  
Cinque Ports.

It was formerly doubted whether a *Certiorari* would lie to the *Cinque Ports*, to remove an Indictment for Felony ; but it hath since been granted to remove an Indictment out of the Court of *Rumney*, upon a Suggestion that the Defendant could not have an indifferent Trial before the Steward there, tho' it was insisted that they had an ancient Charter to exempt them from the Jurisdiction of *B. R.* and from Justices of *Oyer and Terminer*, and of *Affize* ; but *per Curiam* a Charter of Exemption from the *Oyer and Terminer* was never heard of before. *Mich. 8. W. 3. Rex versus Bird.*

*Certiorari's* have been allowed to remove Indictments for Murder, out of a County Palatine ; for though the King hath granted them *Jura Regalia*, yet he did not thereby intend to exclude himself. *March 165.*

It hath been denied to remove an Indictment of Barretry, found before the Justices of Gaol-Delivery, without some special Cause. *P. 9. W. 3. against the Opinions in Popb. 144. Latch 12. Cr. 484.*

And into Wales.

And notwithstanding the Stat. of 26 *Hen. 8. cap. 6.* it was doubted whether it should be granted or not, to remove an Indictment of Petit Treason at the Grand Sessions in *Anglesea*, because the Indictment was taken in a *Welsh* County. *Cr. Car. 332.*

But now this Doubt is resolved, for it hath been granted in Case of Manslaughter and Murder, where the Indictments have been found in *Welsh* Counties. *1 Vent. 93. 146.*

'Tis true, eight Years after the Statute of 26 *Hen. 8.* another Act was made, which gave the Justices in *Wales* Power to hold Pleas of the Crown in as large a Manner as the Chief Justice of *England* may do ; but this is not a Repeal of the former Act, for tho' it gives them Power, &c. it does not exclude *B. R.* without negative Words.

A *Certiorari* was awarded to the Mayor and Justices of *Dover*, before whom an Indictment of Felony was taken, and not to the Lord-Warden, &c. because the Justices hold Plea by Virtue of their Commission of the Peace, and not by their antient Charters. *Cr. Car. 252, 264.*

While one Indictment for a forcible Entry was pending, another was brought against the same Person for the same Force, &c. the first Indictment was removed, and

and the Justices awarded Restitution upon the second ; but before it was executed, a *Certiorari* was deliver'd to one of the Justices to remove the second, who made some Delays till the Party had Restitution ; and that Indictment being also removed, the Complainant had Restitution, and the Justice was reproved by the Court, because the Delivery of the Writ is a *Superfedeas* to their Proceedings. *Yelv.* 32.

It may be granted to remove Orders from an inferior Jurisdiction, where the Denying it is not expressly enjoin'd by some Stat. as in Cases of Bastardy the Act says, That the two next Justices may take Order, &c. and no *Certiorari* is mentioned ; which shews that the Law-makers intended that such Order might be removed ; otherwise they would have enacted, that no *Certiorari* shall lie. 3 *Mod.* 95.

But in no Case forbid by Statute.

It hath been awarded to remove a Presentment in a *Leet*, upon the Stat. 5 *Eliz.* for using a Trade without being an Apprentice notwithstanding the Stat. of 31 *Eliz.* *Sid.* 289.

If Proceedings be removed by *Certiorari*, and after sent back by *Procedendo*, the Bail is for ever discharged. *Co.* Bail and Mainprize, 26.

A Fine set by the Sessions upon the Grand Jury, may be removed.

'Tis not grantable after a Fine estreated in the *Exchequer*, because it then concerns the King, and cannot be removed without the Consent of the Attorney General. *Hardres* 409.

Nor after a Fine estreated into the *Exchequer*.

Nor to remove an Indictment of Felony out of an inferior Court, without shewing some special Cause.

It cannot be granted to remove an Information before the Commissioners of Excise, because the Stat. of 12 *Car.* 2. gives an Appeal to the Sessions, and a Clause that no *Certiorari* shall lie.

Nor to Commissioners of Excise, and in other Cases as follow.

It was denied for removing a Presentment before the Justices in *Eyre*, for cutting Wood in a Forest, for that would take away the Jurisdiction of those Justices who may punish Offences by the Forest-Laws, which are not punishable elsewhere. *Sid.* 296.

So was it denied to remove a Presentment before Commissioners of Sewers, &c. the Party suggesting that he ought not to repair the Sewer, because it may be tried before the Commissioners, as well as a Nuisance in a Court-Leet ; but if the Party will make Oath that a Traverse was denied, then it may be granted.

It was denied to move an Order of Sessions for electing a Constable, that the Order might be confirmed by *B. R.*

but,

but the Court made a Rule for a *Mandamus* to swear him.  
*Style* 127.

It was denied to remove an Information in the Mayor's Court of *London*, against a *Wood-monger*, grounded on an Act of Common Council, unless such Act appear to be against Law. *Style* 211.

Record it self  
not removed  
out of *London*,  
but only *Teno-*  
*rem*.

The Record it self is not removed out of *London*, but *tenorem* only; for by Virtue of their Charter the Record remains there still; and therefore, if there should be a Mistake in the Return, it may be amended; but 'tis a Question whether this may be done in any other County; and 'tis for this Reason that no *Alias Certiorari* will be granted, because the Record is removed in all other Places by the first Writ. *Sid.* 155, 230.

The Indictment was taken *Jan 25*. and the *Certiorari* was of *Michaelmas* Term preceding; the Record was not removed. *Sid.* 317.

It is always denied to remove Indictments of Forgery, or Perjury. *Sid.* 54. because when removed, seldom prosecuted.

Where an Appeal lies to the Sessions, no Order can be removed by *Certiorari* 'till the Appeal is heard, if it be, it is to be sent back by *Procedendo*. 1 *Salk.* 147.

The Defendant being convicted on an Indictment on the Statute 14 *Car.* 2. for beating certain Officers, obtain'd a *Certiorari*, and upon a Motion for a *Procedendo*, it was insisted that a *Certiorari* was not proper after a Conviction, because the Justices who tried the Fact were the most proper to set the Fine; but adjudg'd that a *Certiorari* lies after Conviction, because in some Cases a Writ of Error will not lie: 'Tis true, in this Case it will, because the Proceedings are grounded on an Indictment; and therefore the Party may bring a Writ of Error; for which Reason a *Procedendo* was granted. 1 *Salk.* 149.

A *Certiorari* is never granted to remove Orders of Justices, where an Appeal lies to the Sessions, before the Matter is determin'd upon the Appeal; and if an Order should be removed before that Time, then before 'tis filed above, the Party may there object against the *Certiorari*, and the Order shall be sent down again; but after the Time for Appeal is expired 'tis too late. 1 *Salk.* 147.

*Certiorari* was granted to remove the Order against *A.* and *B.* and the Order was made against *A.* alone; adjudged that the Order was not removed. 1 *Salk.* 15.

Denied to remove a Fine estreated into the Exchequer without the Attorney General's Consent. *Hard.*  
409. A *Cert-*



A *Certiorari* was directed to the Commissioners of Sewers, and brought to their Clerk, who refused to allow it out of Court; but the Commissioners ought to make the Return. *Mich. 8. W. 3. B. R. Style 90. cont.*

The Justices must return it, though Bail be not put in according to the Statute. *Sid. 70. Hill. 13 & 14 Car. 2. B. R.*

Justices must return it, tho' Bail be not put in.

The Return of a *Certiorari* was in Paper, and for that Reason held not good. *Mich. 4 W. 3. B. R.*

The Party cannot wave a *Certiorari* when it is once deliver'd, for then the Court will require a Return thereof. *Hill. W. 3. B. R.*

The *Custos Rotularum* is Keeper of the Records; and yet, upon a *Certiorari*, the Justices themselves must make the Return, because the Writ is directed to them. *Hob. 135.*

Attachment against Justice, for Fining one upon a forcible Entry after *Certiorari* deliver'd to him. *Style 359.*

If there be Variance between the *Certiorari* and the Record which is to be removed, the Justices need not to certify such Record. *Keble 207.*

If a *Certiorari* come to remove the Indictment of *A.* in which some others are indicted with him, yet the Justice need only to certify what concerns *A.* for altho' they are jointly named, yet they are severally indicted. *6 Ed. 4. 5.*

If in a *Certiorari* to remove a Recognizance there be these Words, *viz.* (With all Matters concerning the same, as fully as before you they were taken, &c.) the Justices, together with the Recognizances, must certify the Examination taken, or the Warrant whereby the Party was brought before them, &c. but the Return need not certify more than the *Certiorari* requireth.

Upon a *Certiorari* to remove an Indictment of a Riot, or a forcible Entry, &c. the Return must have these Words, *nec non ad diversas felonias*, or else it is insufficient. *12 H. 7. 24. 2 R. 3. 9. Bro. Indictment, 32, 50.*

If *Certiorari* be brought, and Bail tendred to the Justices, the Proceedings after are *coram non judice*. *March 27. Trin. 15. Car. 1.*

Justice of Peace may send an Indictment into the K. B. by *Certiorari* certified, or Delivery of it *per proprias manus*, and not by another. *Palm. 277.*

The Court inclined that nothing can be removed by *Certiorari*, if it be deliver'd to the Justices after the Time of its Return. *Hill. 17 & 18 Car. 2. Rode's Case in B. R.*

If

Where Title comes in question Certiorari may be granted, any Law to the contrary notwithstanding.

If any Indictment be against any Person for not Repairing Highways, Causeways, Pavements, or Bridges, and the Title to repair the same may come in Question upon such Suggestion, and Affidavit made thereof, a Certiorari may be granted to remove the same into the King's Bench, any Law to the contrary notwithstanding, by 5 & 6 W. & M. cap. 4.

The Certiorari may be sometimes to remove and send up the Record it self; and sometimes only the Tenor of the Record (as it is worded); and it must be obeyed accordingly. *Plowd.* 393.

No Certiorari shall be granted to remove a Recognizance, except the Writ be sign'd by the Chief Justice, or one of the Justices of the Court. 1 & 2 P. & M. 14.

A Certiorari is good, though it do not mention any Cause of Removal. *Lamb. I. p.* 514.

Challenge. See *Juries*.

Chance-Meddy. See *Homicide*.

Cheating and Couzening, See *False Tokens*.

## Church and Church-wardens, &c.

ANY Man may build a Church or Chapel, but the Law takes no Notice of it as such 'till it is consecrated; and therefore the Question, whether Church or Chapel, must be tried by the Certificate of the Bishop, which being done, the Parishioners ought then to repair it, and to keep up the Enclosures and Fences round it.

If it be a Question, whether 'tis a Mother-Church, or only a Chapel belonging to it, and any Proof can be made, that the Sacraments have been administred in the Chapel, and the Dead buried there, then 'tis counted a distinct Church by the Law.

None can give leave to bury in the Church but the Parson only.

When 'tis built, neither the Bishop or Church-wardens can give Leave to bury there, but the Parson only, because the Freehold of the Soil is in him. 1 Cr. 367.

By 5 & 6 Edw. 6. cap. 4. he who is convicted of Striking with a Weapon in Church, or Church-Yard, shall have one of his Ears cut off; and if he have no Ears, shall be burned in the Cheek with the Letter F. which is for *Fighting*.

A Man was indicted at the Sessions in *Glocester*, for striking with a Weapon in the Church-Yard ; it was removed into *B. R.* and moved that he might be admitted to a Fine, but was deny'd, because the Statute appoints another Punishment, *viz.* the Loss of an Ear, as well as a Fine ; and therefore he was forced to traverse the Indictment. *Palmer* 344.

Where 'tis set forth, *quod percussit*, if the Word *malitiose* is omitted, 'tis naught. *Noy* 171, 172.

An Indictment alone, with an Outlawry upon it, is not such a Conviction as to inflict the Corporal Punishment abovesaid.

Churches situated in a Corporation may by the Consent of the Mayor, Justices, &c. or the major Part within the Parish, and the Patron, be united by the Bishop of the Diocese. *17 Car. 2. c. 3.*

Parishioners of the Church united makes the Parishioners Contributors to the Repair and Ornaments of the Church to which the Union was made.

A Justice of Peace cannot impose a Tax for the Repair of a Church. *1 Mod. Rep.* 194.

By Statute *1 Jac. 2.* the Preacher of *St. James's Church, Westminster*, is to have *100*l.* per Ann.* to be paid Quarterly by the Church-wardens ; and in Default, the two next Justices of Peace may give Relief, and cause the Church-wardens to be imprison'd 'till Payment.

*Dethick's Case.*  
*Cr. Eliz.* 234,  
606.  
*2 Leon.* 188,  
248.

How Churches in Corporations may be united.

One was indicted upon the Statute of *5 Edw. 6.* for striking in *St. Paul's Church Yard*, and it was mov'd, that it being the Church-Yard of a Cathedral Church was not within the Statute ; but held by the Court, that it was within the Statute.

*C.* was indicted for Striking in a Church-yard, but was discharged, because it was *apud Generalem Sessionem Facis apud Blandford* ; and was not *in Com. pred.* tho' the County was in the Margin. *Cr. Eliz.* 606. *Child's Case.*

The Provision for the Parson of *St. James's Church.*

One was indicted for drawing his Dagger in the Church, against *J. S.* without saying that he drew it with Intent to strike *J. S.* for which Cause it was holden to be void. *Leon.* 188. *Perchal's Case.* *Cr. Car.* 464. *Cholmley's Case.* It must be drawn with an Intent to strike, or else it is not an Offence within the Statute.

To keep Fair or Market in the Church-yard, fineable. *amb.* 419.

Conviction of any upon the Statute of *5 Edw. 6. c. 4.* may be by the Justices of Peace at their Quarter-Sessions, by Verdict, two Witnesses, or Confession ; and Execution of the Punishment upon the same Statute, to be awarded

Where Conviction on Stat. of *5 Edw. 6.* may be.



warded by the Justices of the Peace before whom the Conviction.

Costs shall be recover'd in the Spiritual Court, for Pr. wling in the Church-yard, *pro expensis litium.* 2 Cr. 462.

For coming to Church, *vide Stat.* 1 Eliz. cap. 2. 1 Eliz. cap. 6. 29 Eliz. cap. 6. 35 Eliz. cap. 1. 3 Jac. 1. cap. 4. 13 & 14 Car. 2. cap. 4.

1 Eliz.

23 Eliz. c. 4.

Note, By the Words of the Acts, it seems necessary to present Offences at Quarter Sessions.

Every Person, having no lawful Excuse, shall repair to some Place where *Common Prayer* is used on Sundays and other Holidays, on Forfeiture of 1*s.* for every Offence, for the Use of the Poor, to be levied by Church-wardens by Distress, &c. by Warrant from one Justice. Persons above sixteen Years old, not repairing to some Church or Chapel, &c. where *Common Prayer* is used for the Space of a Month, forfeit 20*l.* (which the King may refuse, and take the Thirds of all his Lands and Leases) for every Month; and if forbearing for the Space of twelve Months, shall over and above the aforesaid Forfeitures, after Certificate thereof in Writing made in the Court of K. B. by a Justice, or the Ordinary, be bound with two Sureties in 200*l.* for Good Behaviour, and so continue till Person bound do conform and come to Church. Person keeping a School-master, that does not repair to Church, &c. (not being allowed by Bishop or Ordinary) forfeits 10*l.* a Month. Penalties to Queen's Poor, and Informer. By 3 Jac. 1. School-master is disabled to teach for ever afterwards, and is to be imprisoned for a Year. Not being able to pay within three Months, Imprisonment 'till paid, or conform himself.

• Note; Making Submission in open Assizes, or Sessions, shall be discharged of all Pains and Forfeitures incurr'd by this Act (except Treason, and Misprision of Treason.) *Proviso* for Persons having Divine Service in their own Houses, who do not refuse to come to Church, and shall be present there at least four Times in a Year.

35 Eliz. c. 1.

Persons above Sixteen convicted of being absent from Church for a Month, without lawful Cause, or persuading others to impugn the Queen's Authority in Causes Ecclesiastical, or shall frequent Conventicles, every such Person being lawfully convicted shall be committed to Prison without Bail, &c. till they shall conform, &c. But if not in three Months, shall abjure the Realm in open Sessions, or Assizes, being thereunto required by Bishop, or Justice. Felony without Clergy refusing to abjure.

*Note* ; These Acts extend not now to *Protestant Dissenters*, qualify'd by Stat. 1 *W. & M. cap. 18.*

Where a Minister, who hath a Benefice with Cure, <sup>14 Car. 2.</sup> and is Resident upon it, and hath a Curate under him, doth not once a Month himself read the *Common Prayer*, and administer the Sacraments, and other Rites of the Church, he forfeits 5*l.* to be levied by Warrant of two Justices. And by this Statute, the Sign of the Cross is to be used in Baptism, and Kneeling at the Lord's Supper, and at the Prayers, and Standing up at the Creed, and some other Ceremonies, are to be used by Minister and People ; and for not doing hereof, a Man may be indicted, but not before the Justices of Peace.

Where any one is assaulted, or beaten in a Church, it is not lawful to return, or give back any Blows in his own Defence, as he may do in another Place.

No Person having Office, Civil or Military, or other Employment whatsoever, shall, during their Employment, or Office, resort to any Conventicle for Exercise of Religion in other Manner than according to the *Liturgy* of the Church of *England*, where ten Persons are assembled, over and above those of the Houshold, on penalty of 40*l.* to be recovered by who will sue for the same. Conforming to Church of *England*, for a Year, and receiving the Sacrament three Times in that Year, without being present at any Conventicle, Qualification for an Office, &c. But must at the next *Term*, after Admission into any Office in some Court at *Westminster*, make Oath in Writing, or at Quarter-Sessions for the County where the Person lives, of such Conformity as aforesaid. Oath to be recorded. <sup>10 Ann. c. 2.</sup>

No Conviction upon this Act, unless within ten Days, by Oath of two Witnesses before one Justice ; and Prosecution in three Months, &c. Two Justices may give the Oaths for Qualification.

So much of this Act, and the *Schism* Act, as relates to the Qualification of *Protestant Dissenters*, is repeal'd by *Geo. 1 cap. 4.*

Church-wardens are very ancient Officers, and by the Common Law are a Corporation to take Care of the Goods of the Church, the Property whereof is in them for the Use of the Parishioners. <sup>How Church-wardens are to be chosen.</sup>

They are to be chosen by the Canon *Jac. 1.* by the joint Consent of the Minister and Parishioners ; and if they disagree, then the Minister is to chuse one, and the Parish another, every Year in the *Easter Week*, unless there is a Custom to the contrary, which must be observed. <sup>Anno 1604.</sup>

*Roll's Abridg. 287.*

N 2

When

Vent. 266.  
Palm. 50.

When he is chose by Virtue of any Custom, tho' against the Canon, yet if the Arch-Deacon refuses to swear him, a *Mandamus* will lye to compel him to it. And if the Arch-Deacon should refuse one who is chosen, and appoint another against the Consent of the Parish, *B. R.* will grant a special Writ to the Bishop to swear him, *vel causam significare quare non.*

If the *Mandamus* be to swear them, setting forth that they were chosen generally, then a Return generally that they were not chosen, is good; but if sets forth, that they were chosen *debito modo*, there to Return generally that they were not chosen is ill; for it must set forth specially, that they were not chosen *debito modo*.

*Mandamus* to an Arch-Deacon to swear a Church-warden, was return'd that he was *pauper & servus minus habilis*; and thereupon a peremptory *Mandamus* was awarded; for a Church-warden is a temporal Officer, intrusted with the Parish Goods, and Parishioners may chuse and put in Trust whom they think fit; for 'tis at their Peril. *H. 8. W. 3.*

An Attorney  
can't be chosen  
Church-warden.

An Attorney cannot be made a Church-warden; and if he is sued in the Spiritual Court, being chosen to that Office, he may have a Prohibition. *2 Roll's Abridgment 272.*

Church-warden's Duty.

He is to see that the Parishioners come to Church every Sunday and Holy Day, and to present the Names of such who are absent to the Ordinary, or to levy *12 d.* for every Offence, *per Stat. 5 & 6 Ed. 6. cap. 4. & 1 Eliz. c. 1.*

If he find any in an Ale-house, &c. the Person is to forfeit *3 s. 4 d.* and the Master of the House *10 s.* *Jac. 1. c. 5.*

Church-wardens are a Corporation for Moveables of the Parish.

They are a Corporation only as to Moveables, *viz.* to take Goods but not Lands, for the Use of the Church, except in *London* by the Custom; for they cannot prescribe by the Name of Church-wardens, to have Lands, &c. neither can they have any Action at Common Law to recover Goods of which they were never possess'd; but they may recover such Goods by a Bill in Equity. But if once they had Possession, then they may have an Action of Trespass, &c. and recover Damages to the Use of the Parish, if such Goods are taken away, or abused; and they may have an Appeal of Robbery if Stol'n; but they can't sell such Goods, or dispose of them, without the Assent of the Parish; if they do, the Parishioners may choose new Officers, who may bring an Action of Account against them. *3 Ca. Hadman's Case.*



If any thing belonging to the Freehold is broken, or cut down, or the Walls, Windows, Doors or Trees in the Church-yard, &c. the Parson or Vicar, and not the Church-wardens, shall have an Action. But not for Freehold.

But the Church-wardens may maintain an Action for Defacing a Monument in the Church.

And so may the Heir by Descent have the like Action against any one, who beats down or Defaces Coats of Arms or Monuments, in the Church or Church-yard.

In an Action of Account brought by Church-wardens against their Predecessors, they must declare, *Quod reddant eis computum de bonis Parochianorum*, and not *de bonis Ecclesiæ*. 1 Vent. 89. In an Action they must declare *de bonis Parochianorum*, not *de bonis Ecclesiæ*.

If the Minister is disturbed, the Punishment is three Months Imprisonment without Bail. *per 6 Ed. 6. c. 4.*

One making Disturbance in Church, Chapel, or Congregation permitted by the Statute of 1 W. & M. or misusing the Teacher, must find two Sureties to be bound in Recognisance in 50*l.* and for want thereof may be committed 'till next Quarter-Sessions, and upon Conviction there forfeits 20*l.*

Proof by two Witnesses before a Justice of Peace.

The Clergy are excused from serving in any Personal Office though they have Lands, wherereby Lay Persons are obliged, and they are not obliged to serve in the Wars.

Those who arrest a Minister going to or returning from Church may be punished by Indictment, or bound to the good Behaviour. The Offence is the same if a Lay-man be arrested.

Church-wardens may apprehend those who disturb the Minister, &c. and bring them before a Justice of Peace.

They may execute Warrants and levy the Penalty on those who prophane the Lord's Day, or who curse and swear.

They are to joyn with the Constables in making Rates for the Relief of the Poor, &c. and in choosing Surveyors of the Highways, and appointing Days to Work.

At the End of every Year they must account, and deliver what remains in their Hands to the New Church-wardens, by a Writing indented; if they Refuse, they may be presented at the next Visitation, or the new Officers may have an Action against them. At the end of every Year they must account.

Upon a Motion for a *Mandamus* to the old Church-wardens of the Parish of C. to deliver the Parish-books to the new Church-wardens, &c. It was insisted

## Church and Church-wardens, &amp;c.

on by the other Side, that the old Church-wardens had a Right to keep the Parish-Books: So the *Mandamus* was denied; for a Contest between Parish Officers, which of them hath a Right to keep those Books, ought to be tried at Law upon a feigned Issue. *The King versus Stroud and Stroud. Mich. 9 Geo. 1.*

After he has fully accounted, if he be cited in the Ecclesiastical Court, and excommunicated, an Action on the Case lies against him at whose Prosecution he was cited.

Churches, but not Parishes, by the Concurrence of the Ordinary, Patron and Parson, might be united by the Common Law, and such Union was of Spiritual Cognisance till the Statute of 37 Hen. 8. c. 21. and then the Temporal Courts had Jurisdiction: But the Tithes and *Modus* continue after the Union.

Ordinary properly hath the Disposal of the Seats in Churches.

The Ordinary hath properly the Disposal of Seats in Churches, and may place or displace whom he thinks fit; but where Custom or Prescription interposes, there his Power ceases, and the Temporal Courts give Remedy in Cases of Disturbance, &c.

But the Ordinary's barely not acting for many Years (because perhaps there was no Occasion) can never vest a Right in the Church-wardens, who are only a Corporation capable of Goods.

For a positive Prescription seems necessary; and therefore a Man may have a Seat in a Church appendant to his House, and may prescribe, that he, and all those whose Estate he hath, &c. usually sat there, and repaired the Seat, and in such a Case a Prohibition lieth, but one cannot prescribe to a Seat in the Body of the Church generally, without shewing that he, and all those &c. have Time out of Mind repair'd it. 2 Roll's Abbr. 288.

The Case is the same in an Isle of a Church, for such a Prescription to repair the Isle, and to sit there with his Family, makes the Isle peculiar to his House, and he cannot be displaced by any Body; but Sitting and Burying there, without Repairing, doth not make it so. 1 Cro. 367.

But the Ordinary hath no Power over Seats in private Chapels, belonging to particular Families. Roll's Abbr. 288.

Parishes Taxes are made by Church-wardens, &c.

Taxes for Repairs are made by the Church-wardens and greater Part of the Parishioners present, after a general Notice given for that Purpose, and not by the Church-wardens alone. 5 Rep. 67. 1 Vent. 367.

The Charge is in Respect of the Lands, and therefore if the Owner lives in another Parish, he shall be rated

to repair in the Parish where the Lands lye, unless he let by Lease, and then he shall be charged in Respect of the Rent reserved thereon.

And in such Case, if the Lessee is sued for Repairs (as he may) the Landlord shall contribute in Proportion to the Rent reserved, and the Tenant for so much as the Land is worth above the Rent. *2 Roll. Rep. 270.*

A Man had a Lease of a Stall in a Market-Town, where he sold Goods once a Week, but lived in another Parish, he shall not be charged in the Market-Town. *Roll. 228.*

A Person living in one Parish, and occupying Lands in another, shall not be charged for the Ornaments of the Church where the Lands are, because the Inhabitants only are to be charged for Ornaments in regard of their personal Estates. *2 Roll's Abridg. 291.*

The Majority of the Parishioners, at a Meeting may make a Rate to oblige the whole Parish for altering the Place of the Communion Table, and carrying it into the Chancel; and for raising the Ground to go up Steps to it; for they are compellable to put Things in decent Order, and there is no Rule for Decency, but the Judgment of the Majority of the Parish. Majority of Parishioners bind the rest.

But the Majority shall not bind the rest in repairing and adorning the Chancel, because that is the Freehold of the Parson.

One living in one Parish, and occupying Lands in another, may be taxed towards the new Casting the Bells of the Parish where his Lands are.

If those of a Chapelry have always buried and christned within themselves, they may prescribe to be exempt from repairing the Mother-Church; for in such Case, the Chapel shall be intended to be coeval with the Church, and not built since for their Ease.

If there is a Chapel of Ease, which one Part of the Parish hath always used to repair, and to hear Divine Service there, but bury at another Church, they must contribute to repair that Church.

If the Parish is unequally rated, those who are griev'd must plead it in the Spiritual Court, being sued there; but they cannot have a Prohibition. *2 Roll's Abr. 291.*

Church-wardens usually make their Presentments twice a Year, whereof one Time is to be a Week before Easter, when the old Church-wardens are to leave their Office, and the new Ones are to be sworn, which they are not to be till the other have given in their Presentments; and if they refuse, the Parson or Vicar may Present, &c. They cannot be compell'd to Present oftner than.



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than once a Year, except at the Visitation of the Bishop; and the Register is to receive but 40s. for every Presentment.

An Oath was tendred by the Spiritual Court to a Church-warden, to Present according to the Articles of the Bishop, in which were many Special Things; as to present filthy Talkers, &c. and a Prohibition was granted. 1 Vent. 114.

But if the Oath had been to Present according to the Ecclesiastical Laws, and the Articles offer'd only by Way of Direction, in such Case a Prohibition ought not to go. 1 Vent. 127. Hard. 364.

The Bishop of the Diocese cannot appoint Commissioners to rate a Parish for Repairs of their Church. 2 Mod. 8. Curtis's Case.

The Spiritual Court may, by their Ecclesiastical Censure, compel the Parish to repair the Church; but they cannot appoint what Sums are to be paid for that Purpose, because the Church-wardens, by the Consent of the Parish, are to settle that.

If it be necessary to pull a Church quite down, that is so ruinous it cannot be otherwise repair'd, in such Case, upon a general Warning, or Notice given to the Parishioners, or from House to House, the Major Part of them then present, and meeting according to such Notice, may make a Rate for pulling down the Church, and building it upon the old Foundation, and for making Vaults where they are necessary; and if more be raised than is necessary, the Church-wardens are accountable for the Overplus, they not being able to compute to a Shilling. If any of the Parishioners refuse to pay their Proportion, they may be libell'd against in the Spiritual Court; and if the Libel alledge the Rate to be *pro reparatione Ecclesie* generally (though in Strictness *Ecclesia* contains both the Body and Chancel of the Church) yet by the Opinion both of the Court of Common Pleas, and of the Exchequer, it shall be intended, that the Rate was only for the Body of the Church.

If any Parishioner refuse to pay his Proportion, he may be sued in the Court.

The Bishop, much less his Chancellor, cannot set a Rate upon a Parish, but it must be done by the Parishioners themselves.

Church-wardens may make Rates themselves, if the Parishioners are summon'd, and refuse to meet.

Church-wardens may pull off a Man's Hat, who sits cover'd at the Time of Divine Service; for though it is an Offence punishable by Presentment in the Ecclesiastical Court; yet they ought not to suffer such Indecency in the mean

mean Time. 1 Vent. 367. Mich. 18 Car. 2. 1 Lev. 197.  
Jones Rep. 89. 1 Mod. 236. 1 Lev. 146.

If a Parson marry any Person in any Church or other Place, without publishing the Banns according to Law, or without a License for the said Marriage first had, he shall forfeit 100*l.* and the Man so married 10*l.* and Parish-Clerk, or Sexton assisting, or promoting such Marriage, knowing it to be so, shall forfeit 5*l.* to be recovered by Action of Debt, Information, &c. 7 & 8 W. 3. cap. 3.

Forfeiture of a Parson marrying without a License, &c.

Justices, &c. may enter Meeting-houses, and seise Persons assembled (being above five in Number) who are liable to a Forfeiture of 5*s.* for the first Offence, and 10*s.* for the second. And Persons suffering Conventicles to be held in their Houses, to forfeit 20*l.* by Statute 22 Car. 2. But Protestant Dissenters are exempted from Penalties. 1 W. & M.

By Stat 12 Ann. if any Person shall keep any publick or private School, or Seminary, or teach any Youth, as Tutor or Schoolmaster, before he shall have subscribed the Declaration of 14 Car. 2. viz. That he will conform to the Liturgy of the Church of England, as by Law establish'd, and shall have obtain'd a License from the Archbishop, or Bishop of the Diocese, and thereof shall be lawfully convicted, in any of the Courts at Westminster, or at the Assises, he shall be committed to the common Gaol for three Months.

Qualifications of School-Masters, &c. by 12 Ann.

And such Person so keeping a School, &c. shall receive the Sacrament according to the Church of England, and take the Oaths of Allegiance and Supremacy, and Abjuration, and subscribe the Declaration against Transubstantiation of 25 Car. 2. before the Archbishop, or Bishop shall grant him a License.

Such Person resorting to a Conventicle, or Meeting, after licens'd, or teaching any other Catechism than the Catechism in the Book of Common Prayer, the License shall be void, and he shall be liable to the Penalties of this Act.

This Act not to extend to any Tutor, &c. in any College or Hall, within either of the Universities, nor to any Tutor in Noblemens Families, qualifying himself according to this Act, except only in taking a License from the Bishop; nor to any Tutor, or Schoolmaster, teaching Youth in Reading, Writing, Arithmetick, or Mathematical Learning in the English Tongue.

The preceding Act is repeal'd, and also Statute 10 But repeal'd Annæ, for preserving the Protestant Religion, by better by 5 Geo. securing the Church of England, by 5 Geo. c. 4.

Church-

## Church and Church-wardens, &c.

Church-wardens are to suffer no Man to preach within their Churches, or Chapels, without producing their License; and to take care that all Persons excommunicated be kept out of the Church. *Can. 50, 85.* and to see that Peace be duly kept in the Congregation.

They are to keep the Keys of the Belfrey, and take care that the Bells be not rung without good Cause, to be allow'd of by the Minister and themselves. *Can. 88.*

The Parson impropriate has a Right to the chief Seat in the Chancel, because he ought to repair it; but by Prescription another Parishioner may have it. *Noy's Rep. Gilson* vers. *Wright & al.*

If a Man erect a Pew in a Church, or hang up a Bell in a Steeple, they thereby become Church Goods (tho' they are not expressly given to the Church) and he may not afterwards remove them; if he does, the Church-wardens may sue him. *Stat. 10 Hen. 4.*

What are  
Church Repa-  
rations.

Church Reparations extend to Church-yard Walls, the Walls of the Church and Steeple, the Floor, the Pulpit, and the Pews, the Windows, Iron-bars, and Glafs, the Roof Timber with Laths, Nails, &c. the Covering of Lead, Tiles, &c. the Doors with Locks and Keys, Stairs, Floors, Bells, Wheels and Ropes in the Steeple.

To what Pari-  
shioners are  
chargeable.

Parishioners are chargeable for Repairs of Ornaments of the Church, viz. the Communion-Table and Coverings of the Communion Cups, the Bread and Wine, Candles, the Bible, and other Books appointed to be kept in Churches; the Surplice, Pulpit-Cloth and Cushion, are accounted Church-Ornaments. The Sexton's Wages, Washing the Communion Cloaths, Candles, and Monies disbursed by Church-wardens, about the Parish Business, are to be raised by a Rate or Tax upon the Parishioners, not on Lands. *2 Roll. 291.*

Church-war-  
dens to provide  
Stop-Blocks.

Church-wardens of every Parish within the Bills of Mortality, shall at the Charge of their respective Parishes, fix Stop-Blocks, and Fire-cocks, upon the Pipes belonging to the Water-works; and make a Mark on the Front of any House over-against them, to find them, where an Instrument is to be kept to open the Plug when any Fire happens.

And in each Parish shall be kept a large Engine, and a Hand-Engine, and a Leather Pipe and Socket of the same Size as the Plug, or Fire-cock, under the Penalty of 10*l.* to be levied by Warrant of two Justices, by Distress and Sale of the Goods of the Church-wardens; one

Moiety



Moiety to go to the Informer, and the other to the Poor.

The first Person who brings in a large Engine with a Socket, &c. to a Fire, shall be paid 30*s.* the second 20*s.* the third 10*s.* And the Turn-cock whose Water shall first come into the main Pipe, shall have 10*s.* all paid by the Church-wardens, who may raise Money for the Maintenance of the Engine, Stop-Blocks, &c. as they do for the Maintenance of the Poor. *Stat. 6 & Stat. 7 Ann.*

The Rewards for bringing in Engines.

Two Justices (*Quorum unus*) may make their Warrant both to the present and subsequent Church-wardens, to levy all Sums and Arrears of every one who shall refuse to contribute according to Assessment, and in Default of Distress, commit them to the Gaol till Payment be made. *Dalt. 155.*

Church-wardens are not to be cited by the Ecclesiastical Court any further than that they may return the same Day. *2 Co. 112.*

Church-wardens shall not have double Costs, according to *Stat. 7. Jac. 1.* Presenting for Incontinency, it being a Spiritual Matter. *1 Cr. 467.* So in Case of an Action of the Case against them, for such false Presentments, Verdict being given for them. *1 Cr. 286.*

Neither Church-wardens (nor the Ordinary) can give License to bury in the Church, nor any but the Parson, who has the Freehold in him.

None but the Parson to give License to bury in the Church.

If the Church-wardens sue in the Ecclesiastical Court for a Church-Way, which they claim to belong to all the Parishioners by Prescription, a Prohibition lies; for this is not of Ecclesiastical Cognisance. *2 Roll's 289. P. 16 Jac. 1. B. R. between the Inhabitants of Bythorn and Borw.*

If the Church-wardens sue one in the Ecclesiastical Court, for that he, and all those whose Estate he hath in such an House, &c. at the Perambulation or Procession of the Parishioners of the Parish, did use to provide a Refreshment for them with Bread, Cakes, Cheese and Ale, &c. and suffer them to rest there, in this Case a Prohibition will be granted; for that they claim it in the Nature of a *Corody.* *Mich. 13 Jac. 1. B. R. The Church-wardens of Uffington's Case in Berkshire. Hill. 15 Car. 1. B. R. 2 Roll. 287. More, Reynold's Case.*

Church-wardens and Overseers refusing to receive any Person remov'd by two Justices, and to provide for them, forfeit 5*l.* on Proof of two Witnesses before one Justice;

Church-wardens refusing to receive Poor removed by two Justices, forfeit 5*l.*

## Church and Church-wardens, &amp;c.

on Refusal, Distress, &c. for want, forty Days Imprisonment.

In *London* the Parishioners repair both the Church and Chancel. 1 *Salk.* 164. The Spiritual Court may compel the Parishioners to repair the Church, and excommunicate them 'till it be repair'd; but the Ecclesiastical cannot appoint in what Sum, &c. 1 *Mod. Rep.* 194. 2 *Mod.* 8.

If a Parish is increased, the Church-wardens, and greater Part of the Parish, may raise a Tax for the necessary Enlarging of the Church, as well as the Repairing thereof; and if the Church-wardens erect or add any thing new in the Church, as a new Gallery, &c. where there was none before, they must have the Consent of the major Part of the Parish, and also the License of the Ordinary. 1 *Mod.* 237.

Though Lands ought not generally to be tax'd for Church Ornaments, yet by Custom both Lands and Houses may be liable to it. 2 *Inst.* 489. *Cro. El.* 843.

By Custom in *London*, the Church-wardens have the placing the Parishioners in the Seats of the Body of the Church, appointing Pew-keepers, &c.

If the Church-wardens Receipts fall short of their Disbursements, the succeeding Church-wardens must pay them the Ballance, and place it to their Account; and if they have not gather'd their Rates, they may present the Persons making Default in their last Presentment, or pass over their Arrears to their Successors, who shall recover the same for them. 1 *Roll. Abr.* 121.

The Church-wardens have the Care of the Benefice upon any Vacancy.

The Church-wardens have the Care of the Benefice upon any Vacancy, when they are to apply to the Chancellor of the Diocese for a Sequestration, which being granted, they are to manage all the Profits and Expences of the Benefice for the succeeding Parson; Plow and Sow the Glebes, gather in Tithes, thrash out and sell Corn, repair Houses, &c. And they must see that the Church be duly served by a Curate approv'd by the Bishop, whom they are to pay out of the Profits of the Benefice. 2 *Co. Inst.* 89.

The Articles commonly exhibited to Church-wardens to make their Presentments, may be reduced thus,

Viz. To Things which concern

|   |                      |
|---|----------------------|
| { | 1. The Church.       |
|   | 2. The Parson.       |
|   | 3. The Parishioners. |

1. Those

## 1. Those Things which concern the Church ; as,

|                                        |                                |
|----------------------------------------|--------------------------------|
| Alms, whether a Box for that Purpose.  | Communion-Table.               |
| Assessments, whether made for Repairs. | Carpet.                        |
| Bells and Bell-ropes, if in Repair.    | Chest with three Locks.        |
| Bibles, whether in Folio.              | Church and Chancel in Repair.  |
| Canons, whether a Book thereof.        | Creed in fair Letters.         |
| Lord's Prayers in fair Letters.        | Cups and Covers for Bread, &c. |
| Marriage, a Table of Degrees.          | Cushion for Pulpit.            |
| Monuments safely kept.                 | Desk for Reader.               |
| Church-yard well fenced.               | Flagon.                        |
| Commandments in fair Letters.          | Font.                          |
| Common Prayer-Book.                    | Grave-stones well kept.        |
|                                        | King's Arms set up.            |
|                                        | Register Book in Parchment.    |
|                                        | Surplice, whether any.         |
|                                        | Table-Cloth.                   |
|                                        | Tombs well kept.               |

## 2. Those Things which concern the Parson.

|                                             |                                   |
|---------------------------------------------|-----------------------------------|
| Articles Thirty-nine, if read twice a Year. | <i>January</i> 30th, if observed. |
| Baptizing with Godfathers.                  | <i>May</i> 29th, if observed.     |
| Canons, if read once a Year.                | Marrying privately.               |
| Catechising Children.                       | <i>November</i> 5th, if observed. |
| Common Prayer, if read, &c.                 | Preaching every <i>Sunday</i> .   |
| Dead, if he bury them.                      | Peace-maker.                      |
| Doctrine, if he preach good.                | Perambulation.                    |
| Gown, if he preach in it.                   | Sacrament, if celebrated.         |
| <i>Homilies</i> , if read, or he preach.    | Sedition, if vented.              |
|                                             | Sick, if visited.                 |
|                                             | Sober Life.                       |
|                                             | Surplice, if wear it.             |

## 3. Those Things which concern the Parishioners.

|                                     |                                 |
|-------------------------------------|---------------------------------|
| Adulterers, if any.                 | Answering according to Rubrick. |
| Alms-houses, if abused.             | Baptism neglected by Parents.   |
| Alms-houses, &c. in Divine Service. |                                 |

Blas-



## Church and Church-wardens, &amp;c.

Blasphemers.  
 Church, resorting to it.  
 Dead if brought to be buried.  
 Drunkards if any.  
 Fornicators if any.  
 Legacies, if any given to pious Uses.  
 Marrying within prohibited Degrees.  
 Marrying without Banns, License, or at unlawful Hours.

Sacraments receiv'd three Times in a Year, of all above sixteen, whereon *Easter* to be one Time.  
 School, if abused.  
 Seats, if Parishioners are placed in them without Contention.  
 Standing up.  
 Sundays, working therein.  
 Swearers if any.  
 Women, if come to be church'd.

Pleas of unequal Rates are only triable in the Spiritual Court. 2 Roll. Abr. 291.

## An Indictment for striking with a Weapon in a Church-Yard.

Cro. El. 231.  
 2 Leon. 188.  
 Noy 171, 172.  
 St. 5 Ed. 6.

Essex, ss. **T**HE Jurors, &c. Do present, That *O.* of (such a place) in the said County on the 19th Day of December, in the 8th Year of the Reign of our Sovereign Lord the King, with Force and Arms at H. in the County aforesaid, in the Church-yard of the Parish Church of A. maliciously drew his Dagger upon R. N. of H. aforesaid, Yeoman; and then and there smote the said R. N. with his said Dagger in the Church-Yard aforesaid, against the Peace of our said Sovereign Lord the King, and against the Statute in that Case made and provided.

## A Warrant against one for not coming to Church.

Essex, ss. **W**Hereas Oath hath been made before me that J. O. of, &c. did not upon the Lord's Day last past, resort to any Church, Chapel, or other usual Place appointed for Common Prayers, and there hear Divine Service according to the Form of the Statute in that Case made and provided: These are therefore to require you &c. to bring the said J. O. before me to answer the Premises Given, &c.

## A Warrant to levy the Forfeiture for not coming to Church.

Essex, ff. **W** Hereas it hath been duly proved before me that C. D. of, &c. in the County aforesaid, hath not for these four Sundays last past, frequented, or been at any Church, or other Place ordained for the Reading of the Common Prayer, and for Divine Service, but hath irreligiously absented himself from the same, contrary to an Act of Parliament in that Case made; And the said C. D. having appeared before me, but not made a sufficient Excuse for his said Defaults: These are therefore to require you to levy by Distress and Sale of the Goods of the said C. D. the Sum of 4 s. by him forfeited by the Offences aforesaid, and that you do apply the same to and for the Use of the Poor of the said Parish of, &c. rendring the Overplus of the Money raised by Sale of the said Distress, to the said C. D. Hereof fail not. Given, &c.

## A Warrant to Distrain for a Church-Tax.

Essex, ff. **W** Hereas Complaint hath been made unto us by A. B. of, &c. Church-warden of the said Parish, that C. D. E. F. of, &c. aforesaid, have refused or neglected to pay the Sums of Money assessed upon them, for and towards the Reparation of the Parish-Church of, &c. aforesaid, viz. The said C. D. the Sum of 10 s. and the said E. F. the Sum of 5 s. though the said Assessment was legally made: These are therefore in His Majesty's Name to command you, that you, or any of you, do levy the said several and respective Sums of 10 s. and 5 s. by Distress and Sale of the several and respective Goods of the said C. D. and E. F. rendring to them the Overplus, if any be, after the said several Sums, and the Charges of the Distress deducted, and in Case there be no Goods, whereof a sufficient Distress may be taken, that then you do certify the same to us, that such further Proceedings may be made, as to Justice appertains. Given, &c.

A War-

### A Warrant to apprehend a Person for making a Disturbance in the Church, and abusing the Minister.

Essex, *ss.* **W** Hereas A. B. of, &c. and C. D. of, &c. have made Oath before me, that they saw E. F. of your Parish, on Sunday the Day, &c. of this Instant, &c. go into the Parish Church of, &c. in the County aforesaid, and there in Time of Divine Service make a great Noise and Disturbance, and particularly calling G. H. &c. Rascal, and other unbecoming Names, and bidding him get him gone out of the said Church, as having no Business there, to the Interruption of Divine Service; And that the said E. F. was guilty of indecent and irreverent Language to Mr. J. L. Rector of the said Church, who was then and there discharging his Duty, and other Misdemeanors, tending to the Breach of the Peace, and the Contempt of Religion: These are therefore in His Majesty's Name to command you to apprehend the said E. F. if he be within your Parish, and to bring him before me, or some other Justice of Peace for this County, to answer what is objected against him, as aforesaid; and that you do require the said E. F. to bring with him two sufficient Sureties, to enter into a Recognizance for his Appearance, at the next General Quarter-Sessions, to be prosecuted according to Law. Given, &c.

### A Warrant to levy the Forfeiture for using a Trade on a Sunday.

Essex, *ss.* **W** Hereas it has been duly proved before me that A. B. &c. hath of late publicly used and exercised his Trade of, &c. in, &c. by exposing to Sale &c. on Sundays, whereby he hath forfeited the Sum of &c. to the Use of the Poor of the said Parish of, &c. according to the Statute in that Case made: These are therefore in His Majesty's Name to command you to levy, &c. ut supra. Given, &c.

By Stat. 9 Ann. c. 22. A Duty was granted on Coal imported in London, for building fifty new Churches in or near London and Westminster, &c. And a like Duty for the Maintenance of the Ministers, by 1 G. 1. c. 23.



## Clergy.

**W**HAT Clergy is, with the Beginning and Use thereof, see *Hobart's Reports*, 288. *Searle and Williams's Case*. 11 Co. 29.

The Clergy have by Law several Privileges, which are not allowed the Laity, *viz.* Privileges of the Clergy.

They are not to serve in any Temporal Office, tho' they hold Lands, by reason whereof other Men ought to serve; and if they are chosen to any such Office, there is a Writ in the Register to discharge them.

They are not bound to serve in the Wars, neither are they to pay any Tolls or Pontage, for the Goods which they have of the Church.

Before the 20th Ed. 1. they paid no Tenths to the King, for their Ecclesiastical Livings, but to the *Pope*; but in that King's Reign, their Livings were valued all over England, and the Tenths paid to the King; and now by the Statute 26 Hen. 8. c. 3. they are given to the Crown for ever.

If a Man in Orders is a *Cognizee* in a Stat. his Body shall not be taken in Execution; and if he is *Clericus Beneficiarius*, a *Levari facias* shall not be brought against his Goods, but a Writ to the Bishop, to levy the Debt *de bonis Ecclesiasticis*.

All which Liberties and many more, are confirmed by *Magna Charta*, &c.

As to the *Benefit of the Clergy*, it was introduced here by the Canon Law, exempting their Persons from any Temporal Jurisdiction; and as its Original was by the Law of the Church, so it was for some Time allowed only

The Benefit of the Clergy, how introduced.

Clerks in Orders, or to those who had vowed to enter into Orders; and the Reading was to shew that he was qualified, and was allow'd on purpose to save the Life of a Criminal in certain Cases, if he was a Man of Learning, such were accounted in those Days. But afterwards the Reading without a Vow to enter into Orders, was held good, and the Benefit is now equally extended to both Clergy and Laity.

But tho' the Ordinary usually tender'd the Book, the Court are the proper Judges of the Criminal's Reading; and therefore where the Ordinary answer'd *quod legit*, the Court judged otherwise, and fined the Ordinary, and hang'd the Person.

Court is Judge of the Reading.

Antiently it might be claimed by the Party himself, either before or after Conviction, tho' never till the Offender

der was indicted ; but in the Reign of *Hen. 6.* by the Advice of the Judges, it was not allow'd till after Conviction ; so the Law now stands.

At Common Law the Courts were not to tender it *ex Officio*. Nay, in the Reign of *K. Ja. 2.* in the Case of *Goring and Deering*, upon an Appeal, it was held that the Court might delay to call a Criminal to Judgment, after Conviction for Manslaughter, on purpose to make him liable to an Appeal.

Court ought  
*ex Officio* to call  
the P. rty to  
Judgment.

But this is since denied to be Law in the Case of *Armstrong and Lisle*, 8 *W. 3.* and it was resolved, that the Court ought *ex Officio* to call the Party to Judgment, on Conviction of Manslaughter, and to allow him the Benefit of Clergy, if he prays it ; which is now a good Plea in Bar to an Appeal, even tho' he was not actually burnt in the Hand. *Keyling's Reports* 94.

Offender not  
required to  
read now.

By a late Statute, the Offender is not required now to read, but he is to be punished as a Clerk convict, without reading. 5 *Ann. c. 6.*

Antiently an Offender might have his Clergy even for Murder *toties quoties* ; but this was restrained by Statute 4 *Hen. 7. c. 13. viz.* that he should have it but once ; and for the better Observance of that Law, it was then provided, that the Criminal should be marked upon the Brawn of the Left Thumb, that he might be known again upon a second Offence.

Burning in the  
Hand no Part  
of the Judg-  
ment, only a  
Mark set on  
the Offender.

This was the first Statute that was made about Burning in the Hand, which was not intended as any Part of the Judgment, but only a Mark set upon the Offender, that he might not have his Clergy a second Time ; and now after he is burnt, he is by Statute 18 *Eliz. c. 7.* to be enlarged by the Court, &c. But if the Criminal is not burnt in the Hand after Conviction, his Credit is lost, and he is incapable of being a Witness ; for the Law is not satisfied till he is either burnt, &c. or pardon'd. 'Tis true, he may be bail'd in order to get a Pardon, but till then, the Conviction is still upon him : But after Burning the Judge may detain him, if he thinks fit, till he finds Sureties for his Good Behaviour, or he may discharge him.

A Rule in Law  
to have Cler-  
gy, unless ta-  
ken away by  
express Words.

'Tis a Rule in Law, that where a Statute creates a new Felony, the Offender shall have his Clergy, unless 'tis expressly taken away by that or any other subsequent Act.

Now the first Law which made a new Offence, and took away Clergy from the Offender, was the Statute of 7 *Hen. 7. c. 1.* which made it Felony for a Soldier to depart from his Colours without License ; and before that King's Reign there was no Law to take away Clergy, in Cases of simple Felony.

'Tis further to be observed, that where-ever Clergy is taken away by a particular Statute, the Offence laid in the Indictment must be brought within that very Statute, otherwise the Offender shall have Clergy.

As if he is indicted upon the Statute of 8 *Eliz. c. 4.* for picking a Pocket privily, &c. The Words *clam & furtive* must be inserted.

Clergy is taken away in the following Offences, *viz.*

Imbezilling Arms, Ordnance, Munition, Victuals, or Stores of War, either for Land or Sea-Service, to the Value of 20*s.* per 31 *Eliz. c. 4.* & 22 *Car. 2. c. 3.*

Acknowledging, or procuring to be acknowledged, any Fine, Recovery, Deed enrolled, Statute, Recognizance, Bail, Judgment, in the Name of another not consenting, or privy. 21 *Ja. 1. c. 26.*

Bank-Bills. 8 & 9 *W. 3. c. 19.*

In Fair or Market, any Body being in it. 5 & 6 *Ed. 6. c. 6.*

In the Day-time, and taking to the Value of 5*s.* 39 *Eliz. c. 15.*

Breaking into a Shop to destroy Woollen Goods in the Shop. 12 *G. 1.*

Bastard-Child, Mother concealing the Birth. 21 *Ja. 1. c. 27.*

One *Evans* went into a Chamber in the *Inner-Temple*, through the Window, and took 40*l.* and *Finch* was on a Ladder on the Outside of the Chamber at the same Time, and in View of the other: Now, tho' they were both Principals, yet since Clergy was taken away by Statute 29 *Eliz.* from such as *enter and take* away, and since *Finch* did *not enter*, he had his Clergy. *Car. 417.*

Insurance for Assurance of Ships. 6 *G. 1. c. 18.*

Forgery. — 5 *Eliz. c. 7.*

Glary. — 23 *H. 8. c. 1.* Vide 5 *A. c. 6.*

Shipping — Ships. 1 *Ann. c. 9.*

For burning Houses, or Barns full of Corn, Clergy is taken away by the Statute of 23 *Hen. 8. cap. 1.* and for several other Offences therein mentioned.



Afterwards by the Statute 1 *Edw.* 6. c. 12. Clergy is taken away for the same Offences which are mentioned in the Statute of 23 *Hen.* 8. But Burning of *Dwellings houses* is omitted in this last Statute, which is, That in all other Cases of Felony, except those therein mentioned Clergy shall be allowed; and because Burning, &c. was not mention'd therein, it was the Opinion of Judge *Stamford*, That the Principal should have his Clergy; and *25 Eliz.* he had it accordingly.

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Challenge of Jurors. | { Above twenty; or do not directly answer if the Indictment be for such an Offence for which Clergy is not to be allowed, if convicted by Indictment, or Confession.                                                                                                                                                                                                                                                                           |
| Conjuration.         | { Convicted thereof, or of Witchcraft, to kill, consume, or lame any Person undertaking to tell where Goods lost or stolen may be found; or to provoke any unlawful Love; or to destroy, or hurt Cattle, or Goods or Person: First Offence, Imprisonment for a Year without Bail; only once in a Quarter of that Year, must stand six Hours in the Pillory, in some Market, &c. second Offence is Felony without Clergy. 1 <i>Ja</i> 1. c. 12. |
| Debentures.          | { Debentures made knowingly and fraudulently, or altering or counterfeiting them adjudg'd Felony, and the Offender shall suffer Death. 5 <i>G.</i> 1. c. 14.                                                                                                                                                                                                                                                                                   |
| Egyptians.           | { Transported here, and staying above a Month. 1 & 2 <i>Ph.</i> & <i>M.</i> c. 13.                                                                                                                                                                                                                                                                                                                                                             |
| Exchequer Bill.      | { Forging or Counterfeiting it, or any Endorsement thereon, or Tendering in Payment such forg'd Bill, or demanding to have it changed for ready Money by Bank, or any Receiver or Collector knowing it to be forged, or with intent to defraud, on Conviction, is Felony without Benefit of Clergy. 7 & 8 3. c. 31. 6 <i>G.</i> 1. c. 4.                                                                                                       |
| Forgery.             | { Second Conviction. 5 <i>Eliz.</i> c. 14 and 2 <i>G.</i> 2. on the first Conviction.                                                                                                                                                                                                                                                                                                                                                          |

- 1 *Edw. 6. c. 12.* 2 & 3 *Edw. 6. c. 33.*  
 These Statutes mention only the principal Horse-stealer, and therefore the Accessary shall have Clergy. *Dyer 99.*
- Horse-stealing. {
- Lottery Orders. { 12 *Ann. c. 2.* 5 *Geo. 1. c. 1.*
- Maiming. — Person maliciously. 22 & 23 *Car. 2.*
- Maid. — Taken away having Lands, &c. 3 *H. 7. c. 2.*
- Murder. — 23 *H. 8. c. 1.* 25 *H. 8.* 1 *Edw. 6. c. 12.*
- Northumberland. { Notorious Thieves and Spoilers taken there, or in *Cumberland.* 18 *Car. 2. cap. 3.* 29 *Car. 2. cap. 2.*
- Outlawry. { For an Offence not within the Benefit of Clergy. 1 *Ed. 6. c. 12.* 4 & 5 *P. & M. c. 4.* 8 *El. 18 El. c. 7.* 22 *Car. 2. c. 5.* 3 & 4 *W. 3. c. 7.* 4 *G. 1. c. 12.*
- Pick-pocket. { 8 *Eliz. c. 4.* Taking above 12 *d.* from the Person *clam* & *secrete*, for otherwise Clergy is to be allow'd. *H. P. C. 231.*
- Racy. { Accessary before and after, to suffer as Principal. 10 & 12 *W. 3. c. 7.*
- Poisoning. — Of Malice prepense. 1 *Edw. 6. c. 12.*
- Popish Recusants. { Those who are appointed to abjure, and refuse, or return again. 35 *Eliz. cap. 1* & 2.
- Priests, &c. { Those who receive them, being Natives of *England*, and ordain'd by the See of *Rome.* 27 *Eliz. c. 2.*
- Rape. — 18 *E. c. 7.*
- Rioters. — 1 *G. 1. c. 8.*
- Rob. Church. { If found Guilty upon Indictment. 23 *H.*
- and Chapels. { 8. *c. 1.*
- Robbery on the Highway. { If mute, or challenge above 20. 25 *H.* 8. *c. 3.*
- way. { If attainted. 1 *Ed. 6. c. 12.*
- It must be alledg'd to be done *in alta via Regia*; tho' it be *in via Regia* without *alta*, he shall not have Clergy. *Moor 5 Het. 75. Mod. 5.*
- Robbery in Dwelling-house. { Taking Goods by Day or by Night, the Owner or other Person being there, and put in Fear; or shall rob any Dwelling-house in the Day-time, any Person being therein; or break a Dwelling-house,

Robbery in  
a Dwelling-  
house.

Shop, or Ware-house thereunto belong-  
ing, in the Day-time, and taking Goods  
to the Value of 5 s. though no Person be  
therein; the principal Offenders and the  
Accessaries, and those who counsel, hire  
or command any Person to commit Bur-  
glary, being indicted, standing mute, or  
challenging above twenty. 39 *Eliz.* c. 15.  
All Persons who by Night or Day, in any Shop, Ware-house, Coach-  
house, or Stable, shall privately and feloniously steal any Goods of the Value  
of 5 s. or more, though such Shop, &c. be not broke up, and though no  
Person be in such Shop, &c. or that shall assist in committing such Offence.  
10 *W.* 3. c. 23.

Ship.

Destroy'd by Mariners. 1 *Ann.* c. 9.  
G. 1. c. 12.

Stamps.

On Paper. 9 & 10 *W.* 3. c. 25. 6 *G.* 1. c. 21. 6 *G.* 1. c. 4. On Cards, Dice,  
Linen, Silks and Leather. 9 *Ann.* c. 11. c. 23. 10 *Ann.* c. 19. 5 *G.* 1. c. 2.  
6 *G.* 1. c. 21.

Soldier.

Departing without Licence. 2 *Ed.* 6. c. 1.  
wandring without a Testimonial from  
Justice, offending against 39 *Eliz.* c. 15.

South-Sea  
Bonds.

9 *Ann.* c. 21. 6 *G.* 1. c. 4.

Stabbing.

Person not having a Weapon drawn, or  
not striking first, and Death ensuing  
within six Months. 21 *Jac.* 1. c. 1.  
but Accessaries have Clergy. 44. 44.

Returning within the Time after Transportation.  
G. 1. c. 11. 5 *G.* 1. c. 28. 6 *G.* 1. c. 23.

Treason  
Petty.

Persons found Guilty after the Laws of  
Land for *Petty Treason*, 23 *H.* 8.  
*H.* 8. 32.

Woollen-  
Cloth.

Cloth cut and taken, stole or carried away  
from Tenters in the Night-time. 2  
*Car.* 2. c. 5.

Woman

Stolen, having Lands or Goods, or being  
Heir apparent, he that marries, defiles  
or receives her knowingly. 3 *H.* 7. c. 1.



Clergy taken from Accessaries by Statute. For it is a Rule in Law, Where a Statute takes away Clergy from the Principal, it is not by that Means taken away from the Accessary, unless particularly nam'd. 3 *Inst.*

In Burglary. { Accessaries before and after the Fact. 3 & 4 *W. & M.*

In Burning Houses or Barns. { Accessaries in all Cases of 4 & 5 *Pb. & M. cap. 4.*

Knowing and receiving stolen Goods. { Knowing them to be stoln, are Accessaries to the Felony after the Fact. 3 & 4 *W. & M. c. 9.*

Murder. { Accessaries before the Fact. 4 & 5 *Pb. & M. c. 4.*

*Anderson,* 195. Pick-Pocket. { Accessaries, viz. to those who rob any Person. 3 & 4 *W. & M.*

Rape. — Accessaries.

Robbery in the Highway, or Dwelling-house. { Accessaries in all Cases. 4 & 5 *Pb. & M. c. 4.* The Words of the Statute *Pb. & M.* are, viz. If a Man shall maliciously command, &c. another. So that *maliciously* being a material Word, and particularly mentioned in the Statute, the Indictment is not good without it.

*H.P.C. 231.* { Accessaries to robbing Dwelling-house, Shop or Ware-house, and taking in Money, or Goods, to the Value of 5 *s.* 3 & 4 *W. & M.*

Convicted of an Offence, for which a Man may have Clergy, shall, upon her Prayer, suffer the same Punishment the Man should, and may be kept in Prison, not exceeding a Year; but upon her second Conviction shall suffer Death. 4 & 5 *W. & M.*

Woman. { Clerk of the Crown, of the Peace, or of the Assises, certifying by Transcript, the Indictment, or the Tenor thereof to the Judges, or Justices in any other County, that the Person had the Benefit of the Clergy, that shall be a sufficient Proof thereof.

## Clergy. Clerk of the Peace, &c.

Clergy shall be allow'd in all Cases, saving such as mention'd 1 *Edw. 6. c. 12.* or particularly taken away by exprefs Words since that Time. *Cr. 118. nu. 33.*

## Clerk of the Peace, and Custos Rotulorum.

**B**Y Statute of 37 *Hen. 8. c. 1.* the *Custos Rotulorum* in every County is to be appointed by the King during Pleasure, and the Clerk of the Peace was to continue in his Office no longer than the *Custos*.

Clerk of the Peace how removable. 4 *Mod. 167.* Clerk of the Peace, how made.

But by Stat. 1 *W. & M.* the *Custos Rotulorum* is to appoint a Clerk of the Peace to enjoy the Office *Quam diu bene se gesserit.* And Clerk of the Peace misdeeming himself in his Office, the Justices of Peace, in their General Quarter-Sessions, or the major Part of them, upon Complaint in Writing, may suspend or discharge him. And, in such Case, the *Custos Rotulorum*, or other Person to whom of Right it doth belong, shall appoint another Person, residing within such County, &c. in his Room, and in Case of Neglect or Refusal, to make such Appointment before the next General Quarter-Sessions; after such Refusal, the Justices of the Peace, at their General Quarter-Sessions, may appoint one who shall be liable to all the Penalties, Conditions, &c. thereby mention'd, and may be discharged by the said Justices as aforesaid. 1 *W. & M. c. 21.*

So that by this Act, the Power of the *Custos Rotulorum* is abridg'd, for before he might appoint any Person at large; but now the Person appointed must be Resident in the County. Formerly the *Custos* might remove the Clerk, &c. and the Sessions could not, for they had only Power to suspend him for any Misbehaviour; but now the Justices may remove him upon a Complaint exhibited in Writing, and due Proof thereof, and the *Custos* cannot; and if he appoint not another, before the next Sessions, the Justices may do it.

Clerk of the Peace, his Duty, &c.

He is to be present at the Sessions, and to draw up the Process of the Court. He is to read Indictments, and to record the Proceedings of the Justices.

He must record the Rates of Servants Wages, and inrol the Discharge of Apprentices. 5 *Eliz. c. 4.*

He is to certify into *B. R.* the Transcripts of Indictments, Outlawries and Convictions, before the Justices, within forty Days next after the Conviction, &c. or within twenty Days after the Beginning of the Term next ensuing, or forfeits 40*s.* to the King and Prosecutor.

34 & 35 *Hen. 8. c. 14.*

He must record the Presentments for not coming to Church, and the Certificate for not taking the Oath of Allegiance. 3 *Ja. 1. c. 4.*

For inrolling a Bargain and Sale of Lands, not exceeding 40*s.* *per Ann. 1 s.* and if it doth exceed that Value, then 2*s.* 6*d.* 27 *Hen. 8. c. 16.* His Fees by the Stat.

He keeps the Books of Licenses given to Badgers and Loaders of Corn. 5 *Eliz. c. 12.*

For a License and Recognisance for a 

|   |         |   |             |
|---|---------|---|-------------|
| { | Badger, | } | 2 <i>s.</i> |
|   | Drover, |   |             |
|   | Lader,  |   |             |
|   | Kidder, |   |             |

If he take more, he is fineable, &c.

He must take nothing of any Witness who shall give Evidence against a Felon; nor take more than two Shillings for drawing any Bill of Indictment against a Felon, on Forfeiture of 5*l.* with full Costs.

And if he draws a defective Bill, he shall draw a new one without any Fee, under the Penalty of the like Forfeiture, to be recover'd by him who shall sue for the same in any Court of Record. If he draws a defective Bill, must draw a new one gratis.

Clerk of the Peace is Clerk to the Justices, as the Statute 12 *Rich. 2. cap. 10.* nameth him, and not Clerk to the *Custos Rotulorum* only. *Lamb. 394.*

Clerk of the Peace may exercise his Place by himself, or by his Deputy sufficiently instructed in the Law, and admitted by the *Custos Rotulorum*. *Lamb. 324. Stat. 1 W. & M.*

The Justices of Peace can discharge no Clerk of the Peace, for a Fault appearing in Court, without Articles in Writing. *Mich. 3 W. & M. B. R. Shower's Reports 282. The King and Queen versus Evans.* Justices cannot discharge Clerk of Peace without Articles in Writing.

The *Custos Rotulorum* is to name the Clerk of the Peace, but he is in by the Statute, and hath an Estate for Life in his Office, but removeable by the Justices for Misbehaviour. *Trin. 5 W. & M. B. R. Shower's Reports, from p. 156, &c. Harcourt versus Fox. Mod. Rep. 167 to 174. S. C.* And there it is said, that the Judgment was affirm'd in Parliament.

Where



## Clerk of the Peace, &amp;c.

*Custos Rotulorum* must appoint him *quamdiu bene gesserit*.

Where a *Custos Rotulorum* did appoint one to be Clerk of the Peace *durante beneplacito*, the whole Court gave Judgment, that by the Act, the *Custos* being to nominate a Clerk of the Peace, to execute that Office for so long Time as he shall well demean himself, if he appoint him in any other Manner, he is no Clerk of the Peace. *Trin. 6 W. & M. B. R. Mod. Rep. 293. The King and Queen vers. Owen.*

A *Custos Rotulorum* being displaced, and a new one put in his Room, to whom the Clerk of the Peace refused to deliver the *Rolls*, for which he was indicted, and found Guilty, and thereupon he was remov'd from his Office, and he brought a *Mandamus* to be restor'd; and this Matter being return'd, it was said, That though he has a more fix'd Estate in his Office, than the *Custos* hath, yet still he is but his Deputy, and is to be remov'd by a Charge exhibited against him in Writing to the Justices of Peace: And therefore the Clerk of the Peace was not restor'd by the Opinion of three Judges, contrary to the Opinion of *Holt, Ch. Just. B. R. Hill. 6 W. & M. 4 Mod. Rep. 31. The King and Queen vers. Evans.*

He is to file the Hall-keeper of *Blackwel-Hall* his Certificate of the Length and Breadth of Cloth, and for so doing, shall have 1*s.* and to give an attested Copy of such Certificate to any Person demanding the same, for which he shall receive 1*s.* and no more. 1 *Geo. 1. cap. 15.*

The *Custos Rotulorum* is not to sell the Place of Clerk of the Peace, on Pain of forfeiting the Office of *Custos Rotulorum*, and double the Value of the Sum given; and the Party shall be disabled to enjoy it, &c.

The Clerk of the Peace is to make a Note of the Day, Month, and Year of exhibiting Informations triable by the Justices of Peace in Sessions; and from that Time they shall be accounted a Record; and the Name of the Prosecutor, and upon what Statute the Prosecution is made, is to be indorsed by the Clerk of the Peace, or he shall forfeit 40*s.*

He is to enter in a Book the Lists of Persons qualified to serve on Juries, deliver'd in by the Constables, &c. and shall make and deliver to the Sheriff a Duplicate of those Lists by a Time limited. 7 & 8 *W. 3. cap. 31.*

He is to put and keep among the Records of the Sessions the Poll-Books, deliver'd over by returning Officers on the Election of Members of Parliament.

## Clothiers and Cloth.

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The Clerk of the Peace is to keep the Rolls 'till the Process thereon be compleated, and then they are to be deliver'd to the *Custos*. *Black.* 96.

Clipping and Coining. See *Treason*.

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## Clothiers and Cloth.

THE Woollen Manufacture has for several Ages been the Care of this Kingdom, insomuch, that near one Hundred several Acts of Parliament have from Time to Time been made to support, regulate and encourage it ; many of the said Acts are very long, and no way concern the Office of a Justice of Peace ; and therefore it cannot be expected, that this short Treatise should give an Abstract of them all. I shall only give a List of them, and briefly touch on those wherein Justices are concern'd.

The first Act is so long ago as in the 11th Year of *Edw.* 3. by which it is provided, That no Cloths made beyond Sea, shall be brought into the King's Dominions, on Pain to forfeit the same, and to be further punish'd at the King's Will. Then follow 12 *Edw.* 3. 14 *Edw.* 3. 25, 27, 31, 37, 47, 50 *Edw.* 3. 3, 7, 12, 13, 15, 17 *R.* 2. 1, 4, 7, 9, 11, 13 *H.* 4. 8, 10, 11, 20, 23, 33 *H.* 6. 4, 7, 12, 17 *Edw.* 4. 1 *R.* 3. 3, 4, 11, 19 *H.* 7. 1, 3, 4, 5, 6, 14, 15, 22, 23, 24, 25, 26, 28, 33, 35, 37 *H.* 8. 1, 3, 4, 5 *Edw.* 6. 1 *Ma.* 1. 1, 2, 3, 4, 5 *Ph. & Ma.* 1, 5, 8, 18, 27, 35, 43 *Eliz.* 1, 3, 4, 7, 21 *Jac.* 1. 12, 14, 15, 18, 20, 22, 23, 30, 32 *Car.* 2. 1 *Jac.* 2. 1, 2, 4, 5, 6 *W. & M.* 7, 9, 10 *W.* 3. 1, 2, 3, 4, 7, 8, 9, 10 *Ann.* 1, 11, 12, 13 *Geo.* 1.

Clothiers shall pay their Work-folks their Wages in ready Money, and not in Wares, as formerly, on Pain to forfeit to such Work-folks treble Damages, or Sums due to them, and shall deliver them Wool according to due Weight, on Pain of forfeiting 6*d.* for every such Default.

Every Justice of Peace, Constable of any Hundred, or Steward of a Leet out of Corporations, and in Corporations, every Head Officer, or Officers, where no Mayor is, and every Mayor shall hear and determine such

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such Complaints, as well concerning the Labourers Wages, as the Damages aforesaid ; for which said Damages they shall also have Power to commit the Offender to Prison, until the Party grieved be satisfied. 17 *Edw.* 4. c. 1.

By Statute 1 *Geo.* c. 15. the Penalty of Clothiers imposing Goods on their Work-folks in lieu of Money is 40*s.*

Justices of Peace, and Head-Officers, shall in their several Precincts, appoint and swear Officers, or Overseers, for the due observing of the Statute of 3 & 4 *Edw.* 6. c. 2. concerning the well ordering of Cloth, who shall have Power to make Search accordingly. Forfeitures to be divided betwixt the King and Overseers.

No Overseer duly chosen shall refuse to execute the Office, on Pain of 40*s.* The Overseers shall once every Quarter, make due Search, on Pain of 10*l.* None shall interrupt the Overseers in their Office, on Pain of 20*l.* None shall take Advantage of the Forfeitures given by this Act unless the Suit be commenced within one Year after they accrue. 3 & 4 *E.* 6. c. 2.

Faulty Cloaths, in Weight or Measure exposed to Sale by Retail, forfeited ; to be divided into three Parts, the 1<sup>st</sup> to the King, the 2<sup>d</sup> to the Justice, and the 3<sup>d</sup> to Informer. Persons not trying Cloaths to be bought and sold, and not seizing and presenting them, if faulty, forfeit double the Value of the Cloth.

*Note ;* All Statutes repugnant to this, repeal'd. Two Justices of the County, and chief Magistrates in Corporations, have Power of hearing Complaints. 5 & 6 *Edw.* 6. cap. 6.

Two Justices in Counties, and the chief Officers in Corporations, may appoint and swear Overseers and Searchers for faulty Cloth, *per* 39 *Eliz.* cap. 20.

Justices may search after, and seize Ropes, Winches, and Engines used for stretching Northern Cloths ; and he who opposes, forfeits 10*l.* 39 *Eliz.* cap. 20. And by 21 *Jac.* 1. the Overseers may do the like.

All Penalties for want of Length, Breadth, or Weight of Cloth, shall be equally divided into three Parts ; one to the Searchers, the other two to the Poor of the Parish. *See Stat.* 21 *Jac.* 1. cap. 18. how to be recovered. These Penalties are under the Power of Justices of Peace ; and for their Directions herein see *Stat.* 4 *Jac.* 1. cap. 2. 27 *Eliz.* cap. 17. 4 & 5 *Ph.* & *M.* c. 5. 5 & 6 *Ed.* 6. c. 6. 35 *Eliz.* c. 10. 8 *Eliz.* c. 12.



Two Justices in a County, and chief Officer if in a Corporation, with another joined with him, may, either order Satisfaction to be made (double Value by 1 *Ann.*) or order the Offender to be whipp'd, and put in the Stocks. A Sorter, Carder, Kember, Spinster, or Weaver of Wool, found Guilty by Confession, or Oath of one Witness, of imbezilling or detaining Wool from the true Owner, and the Receiver is liable to the same Punishment. 7

*Jac.* 1. c. 7.

Justice negligent in appointing Overseers, or otherwise, Justice negligent in his Duty, according to 39 *Eliz.* forfeit 5 *l.* Justice negligent in his Duty, forfeits 5 *l.*

Justices of Peace have Power to hear and determine these Offences in their Sessions; and Justices of Assize to convict Justices of Peace, who are negligent, upon Proof of two Witnesses.

Any two Justices of Peace may call before them any Person suspected for making deceitful Cloth; and if upon Confession of the Party, or Testimony of two Witnesses, they shall find any guilty thereof, and make Certificate accordingly under their Hands and Seals, to the Church-wardens and Overseers of the Poor of the Parish where the Offence is committed, those Officers shall levy 5 *l.* by Distress and Sale of Goods, and for want of Distress, the Offender shall suffer Imprisonment. 21 *Jac.*

1. *cap.* 13.

Overseer, when chose, if he refuse to execute his Office, forfeits 5 *l.* and to be committed till paid, by Duty of Overseers &c.

39 *Eliz.* c. 20.

He must search once a Month for Defects in the Northern Cloaths. 39 *Eliz.* c. 20.

The Overseer must fix a Leaden Seal to each Cloth, containing the Length and Breadth thereof, with the Word (*Searched*) and his Name thereon; and this is an Exemption from any further Search. And when a Seal is so fixed, if any Person besides the Overseers, shall take away the same without Warrant, and thereof shall be convicted by the Oath of two Witnesses, or Verdict, he forfeits for the first Offence 10 *l.* for the second 20 *l.* to be divided into three Parts; one to the King, a second to the Informer, and the third to the Poor of the Parish; and the Offender to stand in the Pillory. 39 *Eliz.* c. 20.

If any Person, besides the Overseer, shall fix a Seal without a Warrant, he is liable to the same Penalties.

A Searcher may enter into any House, or other Place, to find bad Cloth; and if he find any, he shall stamp the Word (*Faulty*) on the Seal; but he must not search Cloth searched

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searched before, on Pain of 5 *l.* See Stat. of 12 Car. 2. c. 22. relating to the Manufacture of Bays at Colchester.

*Yorkshire* Cloths must be of the Lengths and Breadths prescribed by 7 Ann. c. 13. & 1 Geo. c. 15. on Penalty of 20 *s.* Conviction before one Justice, by Oath of Overseer of Cloth, or any other Witness.

The Duty of  
Owners and  
Occupiers of  
Fulling-Mills.

Owner of every Fulling-Mill shall affix a Seal of Lead, with his Name, and the Length and Breadth of Cloth when wet, on Penalty of 20 *s.* Every Person who takes off, defaces, counterfeits, or alters the Figures on the Seal of the Cloth before sold, or that stretches or strains Cloth when wet, more than allowed by the Act; or Occupier of Fulling-Mill causing to be mill'd in any one Stock at the same Time, more than one Whole Broad cloth, or two Half Broad-Cloths, forfeits 20 *s.* Conviction as before. Penalty to Poor of Parish, where, &c. and Informer. Not paying in seven Days, to be levied by Distress and Sale; for want, to be sent to the House of Correction, not exceeding a Month. Information in ten Days; Appeal to Quarter-Sessions; Appellant to pay Costs, if Appeal not allowed. 7 Ann. c. 13.

\* By 1 Geo. c.  
15 refusing to  
take the Oath  
forfeits 20 *l.*

By 10 Ann. c. 16. all mixed or medly Broad-cloth shall be measur'd at the Fulling-Mill, after 'tis mill'd by the Master of the Mill, who shall first take an Oath before some near Justice, that he will truly perform such Measuring (the Justice to give him a Certificate of his having so done) and shall fix at the Head-end of such Cloth, before carried away, a Seal of Lead, and rivet the same, and stamp his Name thereon, mentioning in Figures the Length and Breadth, for which the Owner shall pay him a Penny. And the Numbers so stamped shall be a Rule of Payment to the Buyer, except by Accident any Part be damaged, and taken off, and then the Part not damnified, shall be again measured, sealed, &c.

† By 1 Geo. c.  
15 forfeits 20 *l.*  
instead of 20 *s.*

If the Master of the Mill refuse, or neglect to affix such Seal, or any Person afterwards take it off, or deface or alter the Figures before the Cloth is sold; and if the Buyer refuse to accept the same, according to such Measure. The Offender convicted on Oath forfeits † 20 *s.* for each Cloth.

No Clothier, Fuller, &c. after such Cloth is fully wet, sealed, and stamped, shall stretch any Cloth above one Yard in 20 Yards Length, or above one Nail in a Yard in Breadth, on Penalty of 20 *s.*

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And every Mill-man shall keep in his Mill a Table, or Board 12 Feet long, and three Feet wide, whereon the Cloth shall be creased, and laid plain with the Length of a Yard marked thereon, with one Inch more, *viz.* 37 Inches long, and in Default thereof, he forfeits 10*l*.

Every Clothier, Cloth-worker, &c. shall make Payment in Money to all employ'd in the Woollen Manufacture for all Work done, and shall not impose on them any Goods or Wares instead of Money on Forfeiture of 20*s*.

All Offences against this Act to be heard and determined by one or more Justices of the Places where committed, (provided the Justice be not concerned in the Matter of the Complaint) on Oath of one Witness; and all Penalties are one Half to the Informer, and the other to the Poor of the Parish. And the Offender refusing Payment for fourteen Days after Conviction, the Justice may grant his Warrant to levy it by Distress, returning the Overplus (if any); and if no Distress, commit to Gaol, or House of Correction not exceeding three Months for one Offence, and all Offences to be prosecuted within thirty Days after they are committed, or discover'd; but an Appeal lies to the next General Quarter-Sessions, on giving Notice thereof. And if the Justices there confirm or disannul the former Order, they shall allow such Costs to the Party grieved, as they shall think reasonable, to be levied, &c. as is usual in Cases of Appeal. *Vide* 10 *Ann. c. 21. & 12 Ann. Sess. 2. c. 20.*

All Offences against this Act, to be heard by one Justice not concern'd in the Matter.

10 *Ann. c. 16.*

Any Person sued for any Thing done in Execution of this Act may Plead the General Issue, and give this Act, and any Special Matter in Evidence; and if he recover shall have treble Costs. And this Act shall be a publick Act, but shall not extend to any Cloth made or manufactured in the County of *York*, nor to invalidate any of the Powers contain'd in the Stat. 7 *Ann.* for ascertaining the Lengths and Breadths of Woollen-Cloth made in the County of *York*.

Person sued may plead general Issue, and give this Act in Evidence, &c.

All mixed, or medly Broad-cloth, shall, at the Instance of the Buyer, be put into Water, and then measured by two indifferent Persons, one chosen by the Buyer, the other by the Seller; if they cannot agree, a third Person to be chosen; he refusing, then the Keeper of *Blackwell-Hall*, if in *London*, shall determine it, being first sworn before some Justice well and truly to perform such Measuring; if not in *London*, then by the Magistrate or chief Officer of such Place where, &c. as aforesaid, 6*d*. Reward for Measuring, to be paid by the Buyer: If less Quantity in Length or Breadth than

All mixed or medly Cloth is to be put into Water, &c.

mention'd



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mention'd on the Seal, then every such Clothier, Owner, or Seller, shall forfeit the sixth Part of the Value of the Cloth. Conviction on Oath before one Justice. Owner or Mill-man of any Fulling-Mill, refusing or neglecting to take an Oath for true Admeasuring Cloth, &c. or to fix a Seal of Lead at one End of such Cloth, with his Name, Length and Breadth of such Cloth; or to enter in a Book in such Manner as aforesaid, shall forfeit 20*s.* to *Christ's Hospital*, if in *London*; if in any other Place, to the Poor, where, &c. Conviction by Oath of one Witness, (one Justice) on Refusal to pay within thirty Days, to be levied by Distress and Sale, by Warrant from one Justice; for Want, to be committed for three Months. *Note*; The Forfeiture of 20*l.* dischargeth the Forfeiture of 20*s.* Buyer of, &c. shall give two Days Notice to Seller, that his Cloth shall be wetted for Proof of Admeasurement. Mix'd or Medly Broad-Cloths shall be stamp'd with the Watch Measure thereof, or the Seal of the Master, &c. by whom wetted. Clothier selling such Cloth, before it be seal'd and stamp'd as aforesaid, with the Name of the Master, &c. Length and Breadth, &c. with the Mark of a Crown on the Rivet of the Seal, shall forfeit the sixth Part of the said Cloth, to be levied and disposed of as aforesaid. Prosecution in forty Days in all Cases, saving where the Mill-man refuseth to pay his Forfeiture for Want of Length or Breadth in Admeasurement.

And to be  
stamp'd, &c.

Persons ag-  
grieved may  
appeal to Quar-  
ter-Sessions.

Persons aggrieved may appeal to Quarter-Sessions, who may finally determine and give Costs. Not to affect any Factor or his Agent, only employ'd in the Sale of, &c. All Persons concern'd in the Woollen Manufacture shall pay their Servants their Wages in Money, and not in Goods or Wares, on Penalty of 40*s.* to be recover'd and disposed of as before. *Yorkshire* Cloths call'd, &c. shall be of such Measure, &c. *Vide* the Act, on Penalty of 20*s.* and 40*s.* Penalty for any Person to put any other Person's Name on his Cloths than his own. 1 *Geo. cap.* 15.

This Act not to extend to any Cloth made or manufactur'd in the County of *York*.

Any Justice, Overseer, &c. may search for Tenters &c. whereby Deceit may be used about stretching Woollen-Cloth; for the first Offence he may deface them; for the second sell them; but two Justices must sell them. 43 *Eliz. c.* 10.

The Justices, upon Information, must execute this Law in seven Days, on Penalty of 5*l.* Clothiers refusing to pay Wages assessed at the Sessions, and convicted thereof before

before two Justices (*Quorum unus*) as aforesaid, shall forfeit 10*s.* to the Party grieved, to be levied by Distress.  
1 *Jac.* 1. c. 8.

See Stat. 14 *Car.* 2. c. 32. for the Power of Justices in the *West-Riding* of *Yorkshire*; and for *Norfolk* and *Norwich*, and also the Town of *Kedermister*.

For the Prohibition of Foreign Wool, Cards, Card-wires, or Iron Wire, or making Wool-cards, and the Punishment thereto, see 14 *Car.* 2. c. 19.

By Stat. 12 *Geo.* 1. All Contracts, Covenants or Agreements, and all By-Laws, Ordinances or Orders, in unlawful Clubs and Societies, between Persons brought up Woolcombers or Weavers, for regulating the Trade, or settling the Prices of Goods, or for advancing their Wages, or lessening their usual Hours of Work, are illegal and void; and if any concern'd in the Woollen Manufactures shall keep up any such Contract or Combination, being convicted on Oath before two or more Justices on Information, within three Calendar Months after the Offence committed, he shall be sent either to the House of Correction, not exceeding three Months, or to the Common Gaol without Bail.

All Contracts,  
&c. for advancing Wages,  
&c. are void,  
&c.

If any Person retain'd as a Woolcomber or Weaver, shall depart from his Service before the End of the Term for which he shall be hired, or shall return his Work before it is finish'd according to Agreement, unless for some reasonable Cause, he shall be committed to the House of Correction not exceeding three Months; and if any Workman shall wilfully damnify his Work, he shall forfeit to the Owner double the Value, or be committed to the House of Correction.

None to return  
Work before  
it is finish'd,  
&c.

Every Clothier shall pay the full Prices agreed on in Money, and not in Goods; and any two Justices on Complaint may summon the Party offending, and for Non-payment of Wages may issue their Warrants for levying thereof by Distress, and for want of Distress, may commit the Party to the common Gaol for six Months, or till he pay the Wages.

Clothiers to  
pay their Work-  
Folks in Mo-  
ney, &c. or  
forfeit 10*l.*

If any Clothier shall pay the Persons employed by him, either in Goods or by Way of Truck, he forfeits 10*l.* Moiety to the Informer, Moiety to the Party aggrieved.

Persons aggrieved by Order of Justices may appeal to the next Quarter-Sessions, giving reasonable Notice of such Appeal; and if it shall appear to them, that reasonable Notice was not given, they shall adjourn the Appeal to the next Quarter-Sessions, and then finally determine the Matter, and may award reasonable Costs to either Party.

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If any assault  
a Master Wool-  
comber, &c.

If any Person assault a Master Woolcomber or Weaver, whereby he receives any bodily Hurt, for not submitting to any illegal By-Laws, or shall write or send any Letter or Message threatening Hurt to a Master, or to burn, or to pull down his House, or to cut down his Trees, or maim his Cattle for not complying with their Demands, being thereof convicted upon any Indictment to be found within twelve Calendar Months next after the Offence, he shall be adjudg'd Guilty of Felony, and be transported for Seven Years to some of the Plantations in America.

If any destroy  
Woollen Goods  
in the Loom,  
&c.

If any shall break into a Shop by Day or Night to destroy any Woollen Goods in the Loom, or any Tools employed in making thereof, or shall cut or destroy any such Goods in the Loom, or on the Rack, or shall destroy any Rack or Tools, he shall be adjudg'd a Felon, and suffer Death without Benefit of Clergy.

This Act, and all the Proviso's therein, shall extend to Combers of Jersey and Wool to Frame-work Knitters, or Makers of Stockings, and to all Persons concern'd in any of the said Manufactures.

The Measures  
of Warping-  
bars.

By Stat. 13 Geo. 1. No Maker of mixed Medley or white Cloth shall use any Warping-bars, but only such as shall be of the Measure and Length following: *viz.* Every long Warping-bar shall be in Length three Yards and three Inches, and no more, and every round Warping-bar four Yards and four Inches round, and no more, and the Thrums at the End of Bars shall not exceed eighteen Inches in Length, on Forfeiture of 10*l.*

Every Maker must give out all Wool, Yarn, or other Materials by Weight, after the Rate of Sixteen Ounces to the Pound, and shall receive back the same by the same Weight without Fraud, on Pain of forfeiting 10*l.*

No Clothier to  
use Ends of  
Yarn, &c.

No Clothier shall use any Ends of Yarn, Wests, or other Refuse (Flocks and Pinions only excepted) by working them up again, on Pain of 3*l.*

All Prosecutions for Offences contrary to this Act shall be heard by two or more Justices for the Place where the Offence was committed, who are to determine the same; and on every Conviction to issue their Warrants to levy the Penalties by Distress and Sale of the Offender's Goods; one Moiety to the Informer, the other to the Poor of the Parish, and for want of Distress, to commit the Offender to the County Gaol, not exceeding three Months, or till Satisfaction made.

All Disputes  
about Wages  
to be heard by  
two Justices,  
&c.

All Disputes relating to Work, Wages or Damages, betwixt Clothier and Weaver, shall be heard by two or more Justices where the Dispute shall arise, who are to summon



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summon the Parties, examine on Oath, and give such Satisfaction and Costs as to them shall seem reasonable; and issue their Warrants to levy by Distress, and for want thereof, to commit the Offender to the County Gaol, not exceeding three Months, or till Satisfaction.

Persons aggrieved may appeal to next Quarter-Sessions, giving six Days Notice in Writing of such Appeal; and Quarter-Sessions are to make such Order, and give such Costs as they think reasonable, and to levy such Costs by Distress, &c. and such Order shall be final; nor shall the Proceedings of Justices out of Sessions or in Sessions be remov'd by *Certiorari*. Persons aggrieved may appeal.

On Information on Oath, that any Persons are (or are suspected to be) guilty of any of the said ill Practices, any two or more Justices are to issue out their Warrants to any Constable or other Peace-Officer, or to any Churchwarden or Overseer, directing him in the Day-time, to enter into any House, or other suspected Place, to search for and examine all Bars and Weights made use of by any Clothier or Maker of Woollen Cloths; and if any Clothier or Maker shall interrupt such Officer in the Execution of his Office, he shall forfeit 5*l*.

Any Peace-Officer by Warrant may search any Endgatherer, his Bag or other Convenience, buying or any ways carrying Ends of Yarn, Wefts, Thrums, short Yarn, or other Refuse of Cloth; and if he finds any Ends of Yarn, &c. (Flocks and Pinions only excepted) he shall carry him before one or more Justices where he shall be found, and on due Conviction on Oath of one or more Witnesses, or by Confession of the Party, he shall be deem'd a dangerous and incorrigible Rogue, and punished as is directed by Stat. 12 *Ann*.

Every Maker shall pay the Weaver according to the Number of Yards that the Chains are laid on the Warping-bars, on Forfeiture of 5*l*.

Every Owner of Tenters or Racks in the Counties of Gloucester, Wilts and Somerset, shall measure his Tenters or Racks, and mark in Figures the true Length of Yards of each Tenter or Rack upon the top Bar; and on the Foreside thereof, each Yard to contain thirty-six Inches, to which shall be added one Inch more in Lieu of the over Measure, on Pain of 5*l*. Every Owner of Tenters must measure and mark his Tenters.

Justices for the said Counties in their *Easter* Quarter-Sessions yearly shall choose so many skilful Men as they think reasonable to be Inspectors for the Year ensuing, and may allow each of them not exceeding 30*l*. *per Ann*. to be paid by the County Treasurers; which Inspectors shall at all reasonable Times (*Sundays* excepted) Justices to choose Inspectors.

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inspect every Mill-shop, Outhouses and Tenter-ground of Clothiers, Millmen and others concerned in making Woollen Cloth, and are to measure every Tenter, and every Cloth before it be carried thence; and shall stamp his Name on a Lead Seal to be furnish'd by the Maker, and fix it on the Head of every Cloth, and shall keep a Register of the Clothier's, Millman's, or other Person's Name, and the Number, Length and Breadth of every Cloth made in their Divisions; and shall at every Quarter-Sessions give in a true Copy of such Register, with what Penalties have been levied within their Divisions: Every Inspector, before he enters on his Office, must take an Oath well and truly to execute his Office according to the Laws of this Realm, and the best of his Skill and Knowledge; and if any Clothier, Maker, Millman, or other Person, shall refuse the Inspector's Entrance, he forfeits 10*l.* and if any Inspector act against his Oath, he forfeits 20*l.*

What every Clothier is to pay to the Inspectors.

Every Maker of mixed or medley Woollen Broad Cloth, shall pay to the Inspectors 2*d.* a-piece for every Cloth he makes before the Cloths are sent away from the Mills; and the Inspectors every three Months, or oftner, must pay the Money to the Treasurer of the County, to be applied by Direction of the Quarter-Sessions towards the Salaries of Inspectors; and every Mill-man sending home any Cloths before they are inspected, for every Piece of Cloth so sent home forfeits 40*s.*

This Act shall not make void any Powers given by Charter, or Act of Parliament, to the Corporation of Clothiers in the City of *Worcester*.

Prosecution to be commenced in three Months, &c.

Every Prosecution for Clothiers paying their Labourers in the Woollen Manufacture their Wages, either in Goods or by Way of Truck, or in any other Manner than in Money, shall be commenced within three Months next after the Offence committed.

Any Person sued for any Matter done in Pursuance of this Act, may plead the General Issue, and give this Act, and the Special Matter in Evidence; and if Plaintiff be nonsuited, &c. or a Verdict be for Defendant, he shall recover treble Costs.

This Act to be allow'd as a Publick Act by all Courts and Justices, without Special Pleading.

*Yorkshire Cloths.*

**B**Y Stat 7 Ann. c. 13. If any Clothier make Cloth in *Yorkshire*, or expose to Sale Broad Cloths, which after well scoured and milled shall be less than five Quarters and an Half within the Lists, and an End or Half Cloth less than twenty-three Yards in Length, and a long or whole Cloth less than forty-six Yards in Length, and any whole thick Kerseys and whole thick Plains less than seventeen Yards and an Half long, and three Quarters and an Half broad when fully wet, shall forfeit 20 s. for every Inch wanting in the Breadth; and for every Yard the Long Cloths shall exceed forty-six Yards, and the Half Cloths shall exceed twenty-three Yards; and for every Half Yard the thick Kerseys and thick Plains shall be shorter than seventeen Yards and an Half. Mill-man in *Yorkshire* not fixing a Seal of Lead riveted and stamped, with his Name at each End of the Cloth before it is carried from the Mill, containing the Number of Yards and Inches in the Cloths in Length and Breadth when wet, scoured and milled; or if any other Person take off, deface, counterfeit, or alter the Figures before the Cloth is exported or sold to Retailers, or stretch a Piece of Woollen Cloth more than an Inch in Breadth in a Quarter of a Yard, or a Piece of Broad Cloth more than a Yard in Length in twenty Yards, or the whole thick Kerseys, and whole thick Plains, more than Half a Yard in every seventeen Yards and an Half; or any Fuller milling or fulling in one Stock at the same Time more, than one whole Broad Cloth, or two half Broad Cloths, shall for every Offence forfeit 20 s. The Conviction is to be by the Oath of any Searcher of Cloth for *Yorkshire*, or by the Oath of one Witness before a Justice, &c. who is neither a Merchant or Trader in the Woollen Manufacture.

The Lengths and Breadths of Woollen Cloths in the West Riding of *Yorkshire*.

Mill man must affix a Seal.

Penalty of defacing the Seal, or overstretching Cloth.

Where Conviction is to be.

The Forfeiture, if not paid within seven Days after Conviction, to be levied by Distress and Sale of Goods, by a Warrant of the Justice, &c. before whom the Offender was convicted; one Moiety to the Informer, the other to the Poor of the Parish, &c. and if no Distress can be taken, then to be sent to the Common Gaol, or House of Correction, there to be kept to hard Labour for any Time not exceeding one Month. The Penalties must be inflicted within ten Days after the Offence committed or discovered.



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## Appeal.

The Party grieved may appeal to the next Quarter-Sessions, and they may allow Costs.

## Defendant may plead General Issue.

If an Action is brought, &c. the Defendant may plead the General Issue, and give the Act and the Special Matter in Evidence; and if he recover shall have treble Costs. This is a publick Act.

## Lengths and Breadths of Kerseys.

By Stat. 1 Geo. 1. cap. 15. All *Yorkshire*, called whole thick Kerseys, whole thick Plains, Huggabags, and broken quilled Kerseys shall not be under eighteen Yards in Length, and no less than three Quarters and an Half Broad by the Standard Yard-Wand, when fully wet, and shall be sealed as *Yorkshire* Cloths are directed by the Act 7 Ann. and under the same Penalties.

## Penalties.

Any Clothier, &c. exposing Cloths to sell wanting one Inch in Breadth, or Half a Yard in Length, forfeits 20s. or stretching them above an Inch in a Quarter of a Yard, or above Half a Yard in Length, forfeits the like, or fixing a Mark on it other than his own Christian and Sirname, and Place of Residence, forfeits 50s. to be levied as mentioned in that Act.

The Penalties must be inflicted within twenty-one Days after the Offence done or discovered.

The Party grieved may appeal to the next Quarter-Sessions, whose Determination shall be final, and they may give Costs.

## Lengths and Breadths of Broad Cloths.

By Stat. 11 Geo. 1. Every Woollen Broad Cloth made in the West-Riding of the County of *York*, whether the same be an End or Half Cloth, or a long or whole Cloth, being well scoured and fully milled, shall be five Quarters and Half by the Standard Yard-Wand in Breadth within the Lifts in the Water, being fully wet; and every such Cloth called an End, shall not exceed in Length twenty-four Yards, nor a whole Cloth forty-eight Yards.

## Penalties.

If any Clothier shall be convicted before a Justice of Peace (not being a Trader in the Woollen Manufacture) of making or exposing to Sale any Cloth not of the said Breadths, or which exceed the said Lengths, he shall for every Inch short of the Breadth, and for every Yard exceeding in Length, forfeit 20s. but if a Cloth shall in some Parts thereof (not exceeding in the Whole one fifth Part of the Length) without wilful Default of the Maker, fall short in the Breadth, on such Accident such Cloths may be sold without incurring any Penalty.

## Mill-man to rivet a Seal of Lead, &amp;c.

All Woollen Broad Cloth shall be measured at the Fulling-Mill, after 'tis fully milled, scoured, and thoroughly wet by the Master of the Mill, who is to take an Oath to measure it truly, who shall rivet a Seal of Lead, to be furnish'd by the Clothier, on each End of the Cloth,

Cloth, and stamp his Name in Words at Length thereon, and in Figures the Length and Breadth of every Cloth, for which he shall be paid 2 s. a Quarter. If Mill-man shall not take the said Oath, or not affix such Seals before Cloth be carried from the Mill, or shall not enter a true Register of the Marks, Sort, Number, Length and Breadth of every Cloth, or shall refuse to permit any Buyer or Searcher to inspect the Books to compare the Marks, &c. or if any Person take off such Seals, or counterfeit them before sold, except a sworn Mill-man, he forfeits 5 l. If Buyer shall suspect the Cloth not to be of the Lengths and Breadths stamp'd on the Seals, in six Days after Delivery, he may, on two Days Notice to the Seller, wet the Cloths four Hours, and cause them to be measured by two indifferent Persons, or by a fit Person to be nominated by next Justice to be sworn; and if Cloth be found deficient one fifth in Length, then the Seller shall forfeit one sixth Part of the Cloth to the Poor of the Parish; and the Buyer shall be at Liberty within three Days to return the Cloth to the Seller, who is to repay him all the Money and Charges, to be ascertained by the Buyer's Oath, and to be recovered by Warrant from one or more Justices, not being Dealers in Woollen Cloth.

Buyer may wet the Cloths if he suspect Fraud, &c.

If any Clothier do not weave his Name and Place of Abode at Length into the Head of his Cloth, or expose to Sale any Cloth without such Mark, or the Seals, or take off or alter the Seals before the Cloth be sold, forfeits 5 l. Every Woollen Broad Cloth made in the said West-Riding shall be dress'd in all Parts alike; and every Cloth-dresser is to affix at the Head of every Cloth a Seal of Lead with his Name, on Pain of 5 l. Every Owner of Tenters is to mark in Figures the true Lengths of Yards of each Tenter upon the top Bar of every Tenter, on Forfeiture of 5 l. for every Tenter not so numbred.

Clothier must weave his Name, &c.

The Justices at *Easter* Sessions shall yearly chuse so many Men within the said Riding as they shall think reasonable, to be Searchers for the Year ensuing, and may allow them a Salary not exceeding 15 l. *per Ann.* out of the Money in the Hands of the Treasurer of the Riding; which Searchers, by Direction of a Justice, may enter in the Day time (*Sundays* excepted) into any Mill-house, Shop, Tenter-Grounds, &c. to search for Cloth over-stretched, and may measure any Cloth they suspect, or any Alteration of Seals; and if any Person shall resist them, he forfeits 10 l. and if the Searcher shall discover any Frauds, the Owner of the Cloth shall forfeit 5 l.

Justices to appoint Searchers.

## Clothiers and Cloth.

Every Searcher must be sworn to execute his Office to the best of his Skill; and if he act against his Oath he shall forfeit 20 *l*.

Searchers not to examine Cloth pack'd, &c.

But Searcher is not to examine any Cloth pack'd up for Exportation, unless by Warrant on Oath of Witnesses that they suspect some Fraud; and if no Fraud be found, then the Informer is to pay the Merchant 5 *s*. for each Cloth so unpack'd.

None who have not serv'd seven Years to exercise the Trade.

None who have not serv'd as an Apprentice for seven Years to the Trade, or have not exercised it (except Widows of Clothiers, and Persons marrying such Widows) shall make any Broad Cloths in the said West-Riding, on Forfeiture of 10 *l*. for every Month.

None to use Cards of Iron Wire, &c.

No Person in dressing Cloth shall use Cards made with Wire of Iron, or other Metal, on Pain of 50 *l*. but Information must be given within twenty Days after the Offence discovered. And all Convictions for Offences (except such for which other Remedy is provided) shall be on Oath of one or more credible Witnesses, by one or more Justices, not being a Dealer in Woollen Cloth; and one Half of the Penalties to be to the Informer, and the other to the Poor of the Parish; and if not paid within ten Days after Conviction, and Notice thereof, or shall not appeal to the Quarter-Sessions, then the Justices are to issue out their Warrant to the Constable of the Town, or Bailiff of the Liberties, &c. to levy the same by Distress and Sale of Goods, rendring the Overplus; and for want of Distress, to commit him to the House of Correction, to be kept to hard Labour for six Months.

Appeal to Quarter-Sessions.

Persons aggrieved may appeal to the Quarter-Sessions, giving ten Days Notice; and if Justices shall confirm or disannul Proceedings, they shall allow such Costs to Party grieved as they think reasonable to be levied, as is usual in Cases of Appeal, whose Order shall be final.

Actions must be brought in Yorkshire.

All Actions must be brought in *Com. Ebor.* and not elsewhere; and Persons sued may plead the General Issue, &c. and recover treble Costs.

This Act to be taken as a Publick Act, and to continue for seven Years; and from thence to the End of the then next Session of Parliament.



A Warrant to send a Weaver to the House of Correction, for returning his Work to the Clothier unfinish'd.

12 Geo. 1. **W** Hereas A. B. of, &c. Clothier, hath this Day made Information upon Oath before us C. D. and E. F. Esqs; two of his Majesty's Justices, &c. that G. H. Weaver, having twenty Pounds of Wool, &c. given unto him by the said A. B. for the making of Cloth on, &c. last, and agreed with the said A. B. to work and make the same into Cloth, by, &c. did on, &c. before the said Day, return the said Wool and Work unmade into Cloth to the said A. B. to the great Damage and Disappointment of him the said A. B. and contrary to a Statute lately made: These are therefore to command you to apprehend the said G. H. to convey him to the House of Correction at, &c. and deliver him to the Keeper, thereof, hereby also requiring you the said Keeper safely to keep the said G. H. in your Custody for the Space of three Months, according to the Direction of the said Statute. Given, &c.

An Appointment of Inspectors of Cloth, made at the General Quarter-Sessions of the Peace held at, &c. in the County of Gloucester, the Day, &c.

**W** E whose Names are hereunto subscribed and Seals, 13 Geo. 1. affixed, Justices of the Peace for the County aforesaid, assembled in the said Sessions, do by Virtue of a Statute lately made, chuse, nominate and appoint A. B. C. D. and E. F. &c. to be Inspectors of Cloth made within the Town and Division of, &c. in the aforesaid County, with full Power and Authority for them the said A. B. C. D. E. F. &c. or any of them, at seasonable Times, to enter into and inspect every Mill, Shop, Out-house and Tenter-ground of every Mill-man, Clothier, and Maker of Cloth living within the said Town and Division, and to measure the Length of Tenters, and the Length and Breadth of all Cloth they shall find there, and affix their leaden Seals to the Head of every Cloth stamp'd with their Names; and also to keep a Register of the Number and Length and Breadth of every Cloth, with the Owner and Mill-man's Name, delivering unto us, or some other of His Majesty's Justices of Peace

## Clothiers and Cloth, &c.

*Peace in Quarter-Sessions, a true Copy of such Register, and to do and execute all and every other Thing and Things appertaining to an Inspector of Cloth, according to the Statute in that Case made, for and during the Term of one whole Year from the Date hereof; for the Performance of all which the said A. B. C. D. &c. have severally taken an Oath before us, and are to have the Allowances and Salaries made by the Law for the same. Given, &c.*

### A Warrant to punish an Imbeziller, and Detainer of Wool by Whipping.

7 Jac. 1. c. 7. Essex, ss. **W** Hereas A. B. Apprentice to C. D. of, &c. Clothier, hath this Day made Oath that E. F. of, &c. Weaver, hath unlawfully imbezilled, detain'd, or wasted the Yarn of the said C. D. his Master, by him the said A. B. deliver'd to the said E. F. by Order of his said Master, the said E. F. having received Yarn sufficient to make ten Yards of Cloth, according to the usual Quantities of Yarn employ'd in the making of Cloth, and instead of making the said ten Yards, hath made only five Yards of Cloth, and refuses to deliver, or account for the Remainder of the said Yarn contrary to an Act of Parliament in that Behalf made: And whereas the said E. F. having been examin'd before us, but not being able to clear himself from the said Charge: These are therefore in his Majesty's Name to command you to put the said E. F. in the common Stocks of your Parish, for the Space of, &c. And then that you do bind him to the common Whipping-post, and whip his naked Back until it shall be bloody, according to the Directions of the Acts of Parliament for punishing such Offenders. Given, &c.

Linen Cloth. See Linen.

## Coaches and Chairs.

5 & 6 W. 3. **T** HE King may appoint five Commissioners, who may license for 32 Years 800 Hackney Coaches, at 5 s. a Week to the King and his Heirs, to be paid monthly, and 200 Hackney Chairs at 10 s. per Ann. payable quarterly.

In London and Westminster, or within ten Miles, no Rates of Hackney Coachman shall take for his Hire above 10s. Coaches, &c. per Day, twelve Hours to the Day; and by the Hour, not above 18d. for the first, and 12d. for every Hour after; and none shall pay from any of the Inns of Court, or thereabouts, to any Part of St. James's, or Westminster, (except beyond Tuttle-street) above 12d. and the same Prices from those Places to the Inns of Court, or thereabouts; and from any of the said Inns, or thereabouts, to the Royal Exchange, 12d. and to the Tower, or Bishopsgate-Street, or Aldgate or thereabouts, 18d. and so from the said Places to the said Inns: And the like Rates from and to any Places at the like Distances.

And none are obliged to pay above 12d. for the Use of any Hackney Coach for any Distance (not specified in the Act) so as it exceed not one Mile and four Furlongs; nor above 18d. for any Distance (not specified) above one Mile and four Furlongs, and not exceeding two Miles.

The Commissioners, pursuant to this Act, have caused the several Distances between the most noted Places within the Weekly Bills, (not specify'd in the Act) to be measured, and rated the same, viz.

- 1 s. Rates for Coaches.
- From Westminster-Hall to Marlborough-Street, Bolton-Street, Soho-Square, Bloomsbury-Square, Little Queen-Street, Holborn.
  - From St. James's Gate, to Queen Ann's Square, Westminster, the nearest Corner of Red-Lyon-Square.
  - From Golden-Square to Red-Lyon-Square.
  - From the Hay-Market Play-house to Red-Lyon-Square.
  - Bloomsbury-Square, Thavie's Inn, Queen Ann's Square, Westminster.
  - From Red-Lyon-Square to Guildhall.
  - From the upper End of Fetter-Lane, Holborn, to Aldgate.
  - From the Royal Exchange to Hoxton-Square.
  - From Newgate to the Middle of Greek-Street, near Soho-Square.
  - From the King's Head Tavern, Southwark, to the Sign of Sir William Walworth.
  - From Grey's Inn Gate to Sadler's Wells by Islington.
  - From Tom's Coffee-house in Russel-Street, Covent-Garden, to New-Castle-house near Clerkenwell-Church.
  - From Temple-Bar to Billingsgate.
  - From Aldgate to Shadwell Church.

From



## Coaches and Chairs.

1 s. 6 d. Rates for Coaches.

From *Drury-Lane Play-house* to *Queen Ann's Square, Westminster*.

From *Westminster-Hall* to *St. Paul's Church*, or *Queen-Square, Red-Lyon-Fields*.

From *St. James's Gate* to *Hatton-Garden*.

From the *New Exchange* in the *Strand*, to the *Royal Exchange*.

From the *Hay-Market Play-house* to *Hatton-Garden*.

From *Red-Lyon-Square* to *Westminster-Hall*.

From *St. James's* to *Marybone-Church*.

From the *Royal Exchange* to *Bloomsbury-Square*, or to the *Watch-house* at *Mile-End*.

From the out-side of *Aldgate* to *Stepney-Church*.

From *Bedford-Street*, *Covent-Garden*, to *Coleman-Street*.

From *Bread-Street* to *Upper Moor-Fields*, and thence to *Hoxton-Square*.

From *Austin Fryars-Gate* in *Broad-Street* to *Hart-Street* by *Bloomsbury-Market*.

From *St. Martin's Lane* in the *Strand* to *Gold-Street* by *Wood-Street*.

From the *End of Lombard-Street* next *Grace-Church-Street* to *Somerset-house*.

From *St. Lawrence-Church* by *Guildball* to *Brownlow-Street*, in *Drury-Lane*.

From the *Royal Exchange* to the *Church* at *Newington* beyond *Southwark*.

From *Tom's Coffee-House* by *Covent-Garden* to the *Royal Exchange*.

From *Stocks-Market* to *Charing-Cross*.

From *Aldgate* to *Ratcliff-Cross*

And by the said Act, the Fare for a Hackney-Chair is 1 s. for any Distance not exceeding a Mile, and 1 s. 6 d. for any Distance not exceeding a Mile and four Furlongs, which by the said Commissioners are thus appointed, viz.

1 s. Rates for Chairs.

From *Westminster-Hall* to *Covent-Garden*, or to *Exeter-Change*.

From *St. James's Gate* thro' the *Park* to *Westminster-Hall*.

From *St. James's Gate* to *Somerset-House*.

From *Somerset-House* to the *Upper End* of *Hatton-Garden*.

From the *Play-house* at the *Hay-Market*, to *Bolton-Street*, *Effex-Street*, *Soho-Square*, the *Entrance* of *Lincoln's Inn Fields*.

From the nearest *Corner* of *Golden-Square* to *Drury-Lane Play-House*.

From

|                             |   |                                                                                                                            |
|-----------------------------|---|----------------------------------------------------------------------------------------------------------------------------|
| 1 s. 6 d. Rates for Chairs. | { | From <i>Westminster-Hall</i> to <i>Marlbrough-Street</i> , <i>Soho-Square</i> , <i>Bolton-Street</i> , <i>Temple-Bar</i> . |
|                             |   | From <i>St. James's Gate</i> to <i>Queen Ann's Square</i> , <i>Westminster</i> .                                           |
|                             |   | From <i>Golden-Square</i> to <i>Red-Lyon-Square</i> .                                                                      |
|                             |   | From <i>Red-Lion-Square</i> to the <i>Hay-Market Play-House</i> .                                                          |
|                             |   | From <i>Queen's Square</i> to the said <i>Play-House</i> .                                                                 |
|                             |   | From the <i>Hay-Market Play-House</i> to <i>Bloomsbury-Square</i> , or <i>Grey's Inn</i> .                                 |

The most noted Places for Standing of Hackney-Coaches are, *Palace-Yard*, *Westminster*, near *Westminster-Hall-Gate*, near *Scotland-Yard*, *White-Hall*, *Charing-Cross*, *St. James's Palace Gate*, *Somerset-House*, *Russel-Street* and *Bedford-Street*, *Covent-Garden*, near *St. Clement's Church* in the *Strand*, *Temple-Bar*, *St. Dunstan's Church Fleet-Street*, near the Gates of the Inns of Courts, *St. Paul's Church-yard*, *Guild-Hall*, *Stocks-Market*, the *Royal Exchange*, between *Bishopsgate* and *Devonshire-Street End*.

If the Commissioners license above 800 Coaches, or 200 Chairs, they forfeit 100*l*. Coachman driving without a License is 5*l*. Forfeiture; and a Chair 40*s*. Forfeiture; and Coach-Horses must be fourteen Hands high, &c. 9 *Ann. c. 23*.

The Commissioners may make Rules, Orders, and By-Laws, to be allowed by the Lord Chancellor, &c. and one Justice may punish, inflict and put in Execution any the Forfeitures, Penalties, &c. and may determine Disputes between Coachmen and others. Appeal to Quarter-Sessions.

Driver of a Coach for Hire, not being interested in it himself, forfeits 20*s*. for demanding more than his Fare, or giving abusive Language, or otherwise misbehaving himself, or sent to *Bridewell* for seven Days, by any one Justice of *London*, *Westminster*, *Middlesex*, or *Surrey*, on Oath of one Witness.

Persons refusing, or neglecting to pay Coachman, or Chairman, their due Fare, or wilfully cutting, defacing, or breaking any Coach, or Chair; on Complaint a Justice of Peace is to grant his Warrant for the Offender to come before him, and on Conviction on Oath, to award Satisfaction, and on Refusal to pay, &c. bind over to the next General Quarter-Sessions.

If any Hackney Coachman or Driver shall refuse to go at, or exact more for his Hire than by Statute 9 *Ann.* is limited, he forfeits a Sum at the Discretion

The Standings of Coaches.

Forfeitures of Coachmen misbehaving.

Persons refusing to pay Coachmen, &c.

of

## Coaches and Chairs.

of the Commissioners, not exceeding 3*l.* nor under 10*s.* and to be determin'd by three or more of them in a summary Way, by the Oath of one Witness. One Moiety to the Crown, the other to the Informer.

Commissioners  
may make By-  
Laws, &c.

Commissioners, or major Part of them, may make By-Laws, Orders, &c. not only to bind all Persons licensed to keep Hackney Coaches, &c. but the Renters of such Licenses, and Drivers of such Coaches, and to annex such Penalties as they shall think fit, not exceeding 3*l.* nor less than 10*s.* And no *Certiorari* shall supersede Execution, or any Proceeding upon such Orders.

None but licensed Persons shall stand, ply, or drive for Hire within the Weekly Bills, with any Coach, Hearse, or Coach-Horses; or shall let to Hire any Mourning-Coach, or Coach-Horses to attend on Funerals, on Forfeiture of 3*l.* a Moiety to the Informer, and the other to the Crown.

No Mourning  
Coaches to be  
hired, but  
what are li-  
censed.

And whereas Undertakers of Funerals have hired Gentlemen's Coaches of their Servants, without the Consent of their Masters, to attend on Funerals, none but licensed Coaches (except the Coaches of Gentlemen attending the Owner, or one of his Family) shall be driven to Funerals; and if any other are, then, upon Information to the Commissioners, they may summon the Driver, and he not appearing, or if he appear, and doth not prove the previous Order from the Owner, shall forfeit 5*l.* to be recover'd of the Driver or Undertaker; and it is 5*l.* Forfeiture for driving a Mourning Coach or Hearse, without a Number fix'd on Fore-Standard, &c. Alderman of every Ward, and Justice within his Jurisdiction in the Cities of, &c. have the same Power as Commissioners. No Carter, Drayman or Waggoner, &c. shall ride on any such Cart, &c. unless some Person be on Foot to guide the same, on Penalty of 10*s.* by Distress and Sale, &c. Conviction by Oath of one Witness. Penalty to Informer and Poor, &c. on Default of Payment to be sent to the House of Correction for three Days.

No Drayman,  
Carman, &c.  
to ride on his  
Cart, &c.

1 Geo. c. 57.

By Order of Commissioners, Hackney-Coaches are to stand in the Middle of the Streets, and not against the Gates, nor in Streets not thirty Foot wide, or cross any Street, or within eight Foot of Houses, Walls, &c. on Pain of 10*s.* and the Drivers are to give Way to Persons of Quality, and Gentlemen's Coaches, under the like Penalty of 10*s.*

Hackney-Coaches not having Tin-Plates with the Number of their Coaches, to forfeit 5*l.* Refusing any Person to take the Number, or giving a wrong Number,



## Coaches and Chairs.

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to forfeit a Sum not exceeding 40s. By 10 Ann. Commissioners may license 100 more Hackney-Chairs, so that the Number do not exceed 300 at one Time: And by 12 Ann. the Widows of Chairmen who died possessed, are to be preferr'd to all others, if they apply in a reasonable Time.

And by an Act 12 Geo. 1. Commissioners for licensing and regulating Hackney-Coaches have Power, under their Hands and Seals, to license an additional Number of Hackney-Chairs, not exceeding 100, which after the Fourteenth of June, 1726. at any Time, during the Term of Eighteen Years from thence next ensuing, shall be kept for Hire within London or Westminster, or the Weekly Bills; so that the Number of all the licensed Chairs shall not, at any one Time, exceed 400.

### A Warrant against a Person for refusing to pay a Hackney-Coachman his Fare, &c.

London, *Jf.* **W** Hereas Complaint hath been made unto 9 Ann.  
me, by A. B. of, &c. Hackney-Coachman, that on, &c. of this Instant, &c. he the said A. B. drove in his Hackney-Coach one C. D. of, &c. from the Royal Exchange to Temple-Bar, and on setting down the said C. D. he the said A. B. demanded his Fare of 1s. as settled by Act of Parliament, but the said C. D. not only refused to pay the same, but beat and abused the said A. B. very much, (or the said A. B. found his Coach cut and defaced, &c.) These are therefore to command you to apprehend the said C. D. if he be within your Limits, and to bring him before me, or some other of his Majesty's Justices of the Peace, to answer the Premises, and to be proceeded against according to Law. Given, &c.

### A Warrant to levy the Forfeiture of a Coachman, &c. for demanding more than his Fare, and misbehaving himself.

London, *Jf.* **W** Hereas A. B. of, &c. hath this Day 9 Ann.  
made Information upon Oath before me T. B. Esq; one of his Majesty's Justices of the Peace within the Liberties of London and Westminster, that on, &c.

## Coaches and Chairs. Coals.

*&c. of this Instant, &c. he was drove in a Hackney-Coach by C. D. of, &c. from the Middle-Temple to the Royal Exchange, and being set down, he the said C. D. demanded of the said A. B. 2s. which is 1s. more than his just Fare, and gave the said A. B. very abusive and threatening Language, so that the said A. B. was obliged for his Safety to pay the said C. D. 1s. 6d. contrary to the Statute in that Case made and provided: These are therefore to require you to demand of the said C. D. the Sum of 10s. for the Use of the Poor of, &c. which I do hereby adjudge he hath forfeited for the Offence aforesaid, by Virtue of the Acts of Parliament, and the Power given to Justices of Peace thereby: And if the said C. D. shall refuse to pay the same, that then you do convey him to the House of Correction, there to remain for seven Days, and be kept at hard Labour, and receive the Correction of the House. Given, &c.*

## Coals.

16 & 17 Car. 2.  
cap. 2.

The Measures  
and weight of  
Coals.

**A**LL Sorts of Sea-Coals brought into the Thames, and sold, shall be sold by the Chalder, containing thirty-six Bushels heap'd, and according to the Standard kept at Guild-Hall; and all other Coals commonly sold by Weight, after 112 Pounds to the Hundred, on Pain of Forfeiture of all Coals otherwise sold or exposed to Sale by any Retailer, and the double Value thereof to be recover'd in any Court of Record, or by Complaint to the Lord Mayor of London, and Justices of the Peace within the City and Liberties, or any two Justices of the Peace, of the several Counties where such Coals shall be exposed to Sale; who upon due Proof upon Oath may convict the Offender, and by Warrant under their Hands and Seals, levy the Forfeitures, one Half to the Informer, the other to the Poor, or to the Repairing the Highways within the same Parish, or any adjoining Parish.

Lord Mayor,  
&c. may settle  
the Price of  
Coals.

The said Lord Mayor and Court of Alderman of London, and Justices of Peace in their several Counties, or any three of them (*Quorum unus*) may set Rates or Prices upon such Coals to be sold by Retail, allowing a competent clear Profit to the Retailer.

If any Ingrosser or Retailer refuse to sell as aforesaid, they may appoint Officers, or other Persons, to enter into any Wharf or Place where such Coals are stored; and if refused,

refused, taking a Constable, force Entrance, and sell the said Coals at such Rates, tendring the Money to the Ingrosser or Retailer, necessary Charges deducted.

Provided no Person be sued upon any other Act for the same Offence; and that to any Action upon this Act the Defendant may plead the General Issue; and if the Plaintiff be Nonsuit, or a Verdict for the Defendant, the Defendant to have Damages and double Costs.

No Person having Interest in any Wharf used for receiving or uttering Coals, or trading by himself, or in any other's Name, ingrossing or selling Coals, shall intermeddle in setting the Prices thereof. 16 & 17 Car. 2. c. 2. This Act was to continue but for three Years, and to the End of the next Sessions of Parliament, but it was revived and continued by Stat. 2 W. & M. c. 7. and by Stat 7 & 8 W. 3. made perpetual.

No Person having any Interest in any Wharf, &c. to be concern'd in settling the Price of Coals.

All Keels, and other Boats, Carts and Wains for Carriage of Coals at *Newcastle upon Tyne*, shall be measured and marked by Commissioners appointed by the King for that Purpose; and if they carry any Coals before they are measured and marked, they are forfeited together with the Coals laden upon them. 30 Car. 2. c. 8.

All Boats and Carts at *Newcastle upon Tyne*, must be measured and marked.

Persons having a Hand in removing, or altering the Marks of Keels, &c. forfeit 10*l.* by Distress and Sale, or want, to be committed for three Months without Bail, &c. Conviction by one Witness on Oath before one Justice. 6 & 7 W. 3. c. 10.

By Stat. 3 Geo. 2. it is enacted, That all Coals landed at any Wharf, or other Landing-Place, within the Cities or Suburbs of *London* and *Westminster*, or Bills of Mortality, in any Cart or other Carriage whatsoever, shall be carried in Linen Sacks, seal'd and mark'd with white paint in Oil, at *Guild-Hall, London*, or at the *Exchequer* Office at *Westminster*, by the proper Officer there; which Sacks shall be full four Feet and two Inches in Length, and six and twenty Inches in Breadth; which all Dealers of Coals shall use for Carriage, and no others: And all makers of Coal-Sacks shall make them of the said Dimensions; and every Dealer using any other Sacks, shall for every Sack forfeit 20*s.* But any Consumer of Coals may carry home his Coals by Porters, or in his own or hired Carts, without being oblig'd to use such Sacks as before described.

All Coals, when landed, must be carried in Linen Sacks sealed and marked, &c.

All Sellers of Coals by the Chaldron, or lesser Quantity, shall constantly use a lawful Bushel, as is described in Act 12 Ann. and shall put three Bushels into each Sack, Forfeiture of 50*l.* And if any Servant of such Dealers in Coals shall fill them into Sacks, without duly

All Sellers of Coals must use a lawful Bushel, &c.



measuring them by such Bushel, he shall be committed to the House of Correction, to be kept to hard Labour, for any Time not exceeding thirty Days, nor less than fourteen Days.

All Penalties under 5 *l.* for Offences in this Act mention'd, shall be recover'd by Way of Complaint to the Lord Mayor, or any one Justice within *London*, or for the several Counties and Places where the Offender shall live, who are to call before them the Parties, and examine the Complaint on Oath, and to grant a Warrant for levying the Forfeiture; one Moiety to the Informer, and the other to the Poor of the Parish; and on Non-payment it may be levied by Distress, rendring the Overplus; or the Offender shall be committed to the House of Correction for any Time not exceeding thirty Days, nor less than fourteen Days, there to be kept to hard Labour.

No Person is  
to keep Turn  
in selling or  
delivering  
Coals.

By Stat. 4 *Geo. 2.* It shall not be lawful for any Owners of a Ship, or Vessel imploy'd in the Coal Trade, or Persons authoris'd by them, to give any Orders to their Agents, in Reference to their keeping of Turn in selling or delivering of Coals in the *Thames*, and no Person is to obey such Orders, or keep Turn as aforesaid, on Forfeiture of 100 *l.* for every such Offence: Moiety to the King, Moiety to the Prosecutor, to be recover'd, with treble Costs of Suit. Actions to be commenc'd within six Months after the Offence, and but one Imparliament allow'd.

Masters of Coal Ships, or Persons having Charge thereof, are to deliver to the proper Officer of the Customs at *London*, the Cocquet containing the Lading of their Ships within four Days after their Arrival at *Gravesend*, on Forfeiture of 50 *l.*

This Act to be deem'd a publick Act, &c.

A Warrant

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A Warrant by two Justices to seise a Parcel of Coals sold by Measure or Weight, contrary to 16 & 17 Car. 2. c. 2. with the double Value thereof, and to deliver one Moiety to the Informer.

Middlesex, *ss.* **F**Orasmuch as it hath been duly proved unto us, that M. B. of your Parish, Ingrosser (or Retailer) of Coals, did on the ——— Day of, ——— last past, sell or expose to Sale, ten Chaldron of Sea-Coal, of the Value of, &c. contrary to the Form of the Statute made in the Sixteenth and Seventeenth Years of the Reign of his late Majesty King Charles the Second, intituled, An Act for Regulating the Measure and Price of Coals; And whereas the said M. B. hath been this present Day convicted before us of the Offence aforesaid, pursuant to the said Statute: These are therefore in his Majesty's Name strictly to charge and command you, and every of you, that you, some or one of you, do immediately upon Sight hereof, or as soon as conveniently you may after the Receipt of this our Precept, seise the said ten Chaldron of Coals, and the double Value thereof, and forthwith deliver one full Moiety of the same unto G. Y. the Prosecutor in this Behalf, to his own Use and Beboof; and likewise that you, or some or one of you, do dispose of, and distribute the other Moiety thereof to the Churchwardens and Overseers of the Poor of your said Parish, to the Use of the poor People of the said Parish, according to the Directions of the said Act; whereof fail not at your Perils. Given, &c.

A Warrant against an Ingrosser or Retailer of Coals, for refusing to obey an Order made by three Justices of Peace, of the County of M. for regulating the Price of Coals according to the Statute.

Middlesex, *ss.* **F**Orasmuch as we Sir A. L. Baronet, C. R. and J. M. Esqrs; three of his Majesty's Justices of the Peace for this County, whereof the said Sir A. L. is of the Quorum, on the ——— Day of  
Q 2

## Coals. Coffee, Tea, &c.

of ——— last past, 'finding it reasonable, meet and convenient, did thereupon (pursuant to a certain Act of Parliament made in the Sixteenth and Seventeenth Years of the Reign of his late Majesty King Charles the Second, intituled, An Act for Regulating the Measure and Prices of Coals) order, adjudge and declare, That Sea-Coals coming from the Town of Newcastle upon Tyne, and other Parts thereunto adjoining, into the River of Thames within this County, should be sold after the Rate and Price of thirty Shillings by the Chaldron: And whereas G. M. an Ingrosser (or Retailer) of Sea-Coals, at his Wharf (or Warehouse) in Milford-Lane within your said Parish, doth refuse to sell such his Coals according to the Rate and Price aforesaid; whereupon we have thought fit (according to the Authority given unto us by the said Act) to authorise and appoint W. H. and J. D. of your said Parish, by themselves jointly, or severally to enter into the Wharf (or Warehouse) of the aforesaid G. M. in the said Parish where his said Coals are so stored up, as aforesaid: And in Case of Refusal, or Resistance by him the said G. M. in permitting the said W. H. and J. D. or either of them to do the same, that you the said Constables, or some or one of you, do assist them the said W. H. and J. D. to force Entrance thereunto, and seize upon the said Coals, and sell, or cause the same to be sold at the Rate and Price aforesaid; and after necessary Charges and Expences in and about the selling the said Coals shall be deducted and defrayed, that then the said W. H. and J. D. do return and pay unto him the said G. M. all such Monies as shall be so remaining in their Hands, upon the Sale of the said Coals as aforesaid: And for your and every of your so doing, this our Precept shall be your sufficient Warrant. Given, &c.

## Coffee, Tea and Chocolate, &c.

THE Statute 10 Geo. 1. which takes off the Customs from Duties on Coffee, Tea and Chocolate, lay certain inland Duties thereon, payable by the Druggists and Dealers therein; and Entries are to be made in Writing of all Ware-houses, Shops and Places where made &c. on Penalty of 200*l.* and Forfeiture of the Goods, &c.

Officers of the said Duties may in the Day-time enter such Ware-houses, Shops and Places, to Weigh, Gauge and take Account of Coffee, &c. the Owner to assist therein, and to keep good Scales, Weights, &c. And Persecute hindring

Entries of all  
Coffee, &c.  
are to be  
made.



## Coffee, Tea, and Chocolate, &c.

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hindring the Officer, or not assisting, or not keeping such Weights and Scales, forfeits 200 l.

Officers, on Suspicion of Coffee, &c. conceal'd, &c. Officers may enter and seize. may (if within the Bills of Mortality) on Oath before the Commissioners of the Duties (or if in other Places before one Justice, by their special Warrant) by Day or (with a Constable, &c. by Night) enter suspected Places, and seize and carry away such concealed Coffee, &c. and Person obstructing or hindring the Officer, &c. in entering or seizing, forfeits 100 l. Stat. 10 Geo. 1. c. 10.

By Stat. 4 Geo. 2. any Officer of Excise or Customs, may seize any Quantity of Starch or Hair-powder, with the Horses and Package that shall be found in any Vessel, or shall be carrying in any Cart or Waggon where they shall have good Reason to suspect it has been made in any private Ware-house, or clandestinely imported, or that the same Starch or Hair-powder hath been exported or landed again after the Duty has been repaid at the Exportation; and after such Seizure, the Officer is within ten Days, to exhibit an Information before three or more of the Commissioners of Excise, or two or more Justices of Peace near the Place: And if the Party, in whose Possession such Starch or Hair-powder hath been found, does not make it appear that the Duty has been paid, the Starch and Hair-powder so seized shall be forfeited, with the Horses and Package, and the Person in whose Possession found shall forfeit 5 l. for every Hundred Weight, and the Commissioners or Justices shall proceed to Judgment.

If any Officer of Excise or Customs shall have Cause to suspect that Starch is privately making, or that any Starch is concealed, then on Oath before the Commissioners, or any one Justice near the Place, setting forth the Grounds of his Suspicion, they may by Special Warrant empower such Officer, by Day or by Night (but if by Night, then in the Presence of an Officer of the Peace) to enter into all Places where they shall suspect Starch is privately making, lodged, or concealed, to seize the Starch, with all the Materials as forfeited, and the Party shall forfeit 50 l.

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If any Dealer in Tea shall manufacture any Sloe None to counterfeited Tea, &c. Leaves, Liquorish Leaves, or Leaves of Tea that have been used, or any other Leaves in imitation of Tea, shall mix or dye such Leaves or Tea with *Terra Japonica*, Colosses, Clay, Logwood, or with any other Ingredients whatsoever, or shall sell or expose to Sale, or shall have in his Custody any such Leaves in Imitation of Tea, he shall forfeit for every Pound of such Tea 10 l.

## Common Prayer.

All Penalties and Forfeitures for any Offence against this Act shall be sued for, recovered and mitigated as any Penalty against the Laws of Excise, or by Action of Debt, Bill, &c. in any of the Courts of Record at *Westminster*; and one Moiety shall be to the King, and the other to the Informer. *Stat. 4 G. 2.*

## Common Prayer.

THE Acts of Parliament settling and enjoying the Use of the Common Prayer are the 2 & 3 *Ed. 6. c. 1.* 5 & 6 *Ed. 6. c. 1.* 1 *Eliz. c. 2.* and 13 & 14 *Car. 2. c. 4.*

On these Statutes are to be observed :

1. The Punishment of a Minister for refusing to use, or depraving the Book of Common Prayer.
2. The Punishment of any other Person depraving it, and of such who shall hear, or be present at any other Form.
3. Who are bound to use it, and assent to it.
4. Who must provide it.

Punishment of Minister depraving, or not using the Common Prayer.

First, A Minister convicted by Verdict, Confession, or notorious Evidence of the Fact of refusing to use it, or using any other Form, or depraving it.

If Beneficed.

For the first Offence, by 2 & 3 *Ed. 6.* he forfeits to the King which of his Benefices the King will choose. But by *Stat. 1 Eliz. cap. 2.* loses his Spiritual Livings for a Year, and by both Imprisonment for six Months by the first Statute, without Bail; and by the other indefinitely.

For the second Offence Deprivation and Imprisonment for a Year, by both Statutes.

For the third Offence, Imprisonment for Life by the Statute of *Ed. 6.* and Deprivation and Imprisonment for Life, by the said Statute of *Eliz.*

If not Beneficed. { First Offence for six Months. But by the Statute of 1 *Eliz. cap. 2.* Imprisonment for Twelve Months.

{ Second Offence, Imprisonment for Life.

Secondly, If any Person shall be convicted, (as aforesaid) by Songs, or otherwise to have depraved it, or to procure a Minister to say any other Form, or have interrupted him to say the Service. Or any other Person so doing.

First Offence, *per Stat. 2 & 3 Ed. 6.* forfeits Ten Pounds to the King; and if not paid within six Weeks after Conviction, then Imprisonment for three Months instead thereof: But by the Stat. 1 *Eliz.* forfeits 100 Marks to the Queen; and if not paid (*ut supra*) shall instead thereof be imprisoned for a Year. 1st Offence.

Second Offence, *per Stat. Ed. 6.* forfeits Twenty Pounds to the King; and if not paid (*ut supra*) Imprisonment for six Months without Bail. But *per Stat. 1 Eliz.* forfeits 400 Marks to the Queen; and if not paid (*ut supra*) Imprisonment for a Year. 2d Offence.

Third Offence, forfeits all his Goods and Chattels, and Imprisonment for Life. 3d Offence.

Any Person convicted at the Assizes, or Sessions, to have wittingly heard, or to have been present at any other Form of Common Prayer, than what is expressed in the Statute of 2 & 3 *Ed. 6.*

First Offence, Imprisonment for six Months without Bail.

Second Offence, Imprisonment for Twelve Months.

Third Offence, Imprisonment for Life. 5 & 6 *Ed. 6. cap. 1.*

Justices of Oyer and Terminer, of Assize, and Mayors, and Head-Officers of Corporations, have Power to hear and determine Offences against the Statute of 2 & 3 *Ed. 6.* The Prosecution must be at the next Assizes after the Offence committed. But *per Stat. 23 Eliz. c. 1.* Justices in Sessions have the like Power. (But for any Offence against 1 *Eliz. c. 2.* only, no Man is to be questioned after one General Sessions next after the Offence done is past.) But Prosecution on 23 *Eliz. c. 1.* must be within a Year and a Day after the Offence.

No Form of Prayer shall be used in any publick Place, other than according to the said Book.



Parsons must  
read it once a  
Month.

Thirdly, Who are bound to use it, and assent to it. Incumbent on a Benefice with Cure, residing on his Living (though he keeps a Curate) and not having a lawful Impediment to be allowed by the Ordinary, must himself once a Month read it, as by the said Book is appointed, or for every Offence forfeits five Pounds to the Use of the Poor. Conviction must be before two Justices, by his own Confession, or Oath of two Witnesses. 13 & 14 Car. 2. c. 4.

If the five Pounds is not paid within ten Days after Conviction, then the Church-wardens and Overseers of the Poor may, by a Warrant from two Justices, levy it by Distreins and Sale of Goods. *Ibid.*

What Lectu-  
rers, Preachers,  
or Readers  
must do.

No Person shall be a Lecturer, Preacher, or Reader, with a License from the Ordinary, but must read the thirty-nine Articles, and declare his Assent thereunto, and must read the Service the first time he Preaches, and declare his Assent to it; and upon the first Lecture-Day of every Month must read the Service, and declare his Assent, as *per Stat.* 13 & 14 Car. 2. and if he refuse, he is disabled to preach 'till he conform. But at Sermons and Lectures in Cathedrals and Colleges, 'tis sufficient if a Lecturer declare his Assent to all Things in the said Book.

If any Person shall Preach, being disabled (*ut supra*) before he conforms, two Justices, upon Certificate from the Ordinary, may commit him for three Months.

Cases on the  
said Acts.

A Man was convicted for Administring the Sacrament of Baptism in another Form than prescribed by the Book of Common Prayer. He was indicted the second time for the like Offence, and had Judgment to be imprisoned for a Year, and to be deprived, *ipso facto*, of all his Spiritual Promotions; and upon a Writ of Error brought, this last Judgment was reversed, because the first Conviction was not set forth in the second Indictment; for otherwise the second Conviction doth not warrant such a Judgment. *Godb.* 118.

Fourthly, The Church-wardens must provide one in every Parish Church, at the Charge of the Parishioners. *per* 13 & 14 Car. 2. c. 4.

In Term' Trin. 33 Car. 2. B. R. it was resolved that the Stat. 1 Mar' extends to the Divine Service now established, and that the Word *such* shall not be referred to the Quality of the Service, but to the Authority establishing it. 2 Jones's Rep. 159. *Parson's Case*.

One was indicted at the Quarter-Sessions for using other Prayers in the Church, and in another Manner than mentioned

mentioned in the Book of Common Prayer, and concluded *contra formam Statuti*; he was found Guilty, and fined 100 Marks; and upon a Writ of Error it was argued for the Plaintiff in Error, that this Indictment was not warranted by any Law: But if this should not be allowed, the Justices of Peace have not Power in their Sessions to enquire into this Matter; or if they had Power, they could not give such a Judgment, because the Punishment is directed by the Statute, and of this Opinion was the whole Court, *viz.* That Offences against that Statute are inquirable by the Justices of Peace.

The Indictment ought to have alledged, that the said S. used other Forms and Prayers, instead of those enjoined, which were neglected by him; for otherwise every Parson may be indicted who useth Prayers before his Sermon other than such which are required by the Book of Common Prayer. *Pasch. 1 Ja. 2. B. R. 3 Mod. Rep. 78, 79, Rex ver. Sparks.*

### A Warrant against an Incumbent for not reading the Service once a Month.

Essex, ff. **W** Hereas W. N. Incumbent on the Benefice of L. with Cure in the said County, and residing on his said Living, and having no lawful Impediment allowed by his Ordinary, hath on the third Day of this Instant July, been lawfully convicted before us, R. B. and W. N. two of His Majesty's Justices of the Peace for the said County, for that he the said W. N. did not in a Month last past publickly read the Common Prayers in the said Parish-Church of L. in such Manner and Form as in and by the Book, entitled, A Book of Common Prayer, &c. is appointed, and according as 'tis enjoined by the Statute in that Case made and provided, by reason whereof, and by Virtue of the said Statute, he the said W. N. hath forfeited 5l. to the Use of the Poor of the said Parish: These are therefore to Require you, or some of you, to ask and demand the said 5l. of the aforesaid W. N. and if the same shall not be paid to you, or some of you, within ten Days after such Demand, and Conviction aforesaid, then to levy the same by Distress and Sale of the Goods of the said W. N. rendering to him the Overplus; and hereof fail not. Given, &c.

## A Commitment of a Lecturer, &c. for Preaching, being disabled, &c. by the Statute of 13 & 14 Car. 2. c. 4.

Essex, ss. **W** Hereas upon a Certificate from the Ordinary of the Diocese of L. directed to us A. B. and C. D. two of His Majesty's, &c. it doth appear to us, that J. S. therein named, being Lecturer of the Church of H. in the said County, hath preached there without a License by him had or obtained from his said Ordinary, and hath not read the thirty-nine Articles in his Presence, nor declared his Assent thereunto; and hath not upon the first Lecture-Day of every Month, since he hath been Lecturer there, read the Service appointed for that Day, and declared his Assent thereunto, pursuant to the Statute in that Case made and provided, by reason whereof, and by Virtue of the said Statute, the said J. S. is disabled to preach until he conform to the said Law: And whereas it doth likewise appear unto us, That the said J. S. after such Disability incurred as aforesaid, and before his Conformity, that is to say, on the third Day of this Instant June, hath preached in the Parish-Church of H. aforesaid, contrary to the Form of the said Statute: These are therefore in His Majesty's Name to require you to apprehend the aforesaid J. S. and to convey him to the common Gaol of the said County, and to deliver him safely to the Keeper of the said Gaol, together with this Precept; hereby also commanding you the said Keeper, to receive the said J. S. into your Custody, and him safely there to keep for the Space of three Months next ensuing the Date hereof. Given, &c.

Conies. See Game and Hunting.  
Conjuration. See Felony.

## Conspiracy.

Where Butchers, Bakers, &c. conspire to sell at certain Prices.

**I**F any Butchers, Brewers, Bakers, Poulterers, Cooks, Costermongers, or Fruiterers, shall conspire, covenant &c. not to sell but at certain Prices; or if Artificers, Workmen, or Labourers, conspire, covenant or promise that they will not do their Work but at certain Prices or Rates, or shall not work but at certain Hours or Times



Times ; or shall not take on them to finish what another hath begun ; or shall do but certain Work in a Day, such Person convicted by Witness, Confession or otherwise, shall forfeit 10*l.* to the King ; and if not paid in six Days after Conviction, shall be imprison'd for twenty Days with only Bread and Water ; and for the second Offence forfeit twenty Pounds, and shall pay it within six Days, or else have the Pillory ; and for the third Offence forfeit forty Pounds ; and if not paid in six Days, shall be set in the Pillory, and have one of his Ears cut off, and be infamous.

And if such Conspiracy be made in a Society, Company of any Craft, Mystery, or Occupation abovemention'd, by the more Part of them, then over and besides the particular Punishment above mention'd, the Corporation shall be dissolved. Justices of Peace may hear and determine the Offences, and punish the Offenders.

2 *Edw.* 6. c. 25. revived by Statute 22, 23 *Car.* 2.

But besides this, there is another Sort of Conspiracy, which is, where two or more agree falsely and maliciously to indict an innocent Man, who after he is acquitted by Verdict, hath two Remedies to punish the Offenders.

Moor 562, 788, 815, 816.

Where two or more conspire to indict an innocent Man,

&c.

(1.) By a Writ of Conspiracy, which is a Civil Action, in which Damages are to be recover'd.

(2.) By Indictment, at the Suit of the King.

But the Action will not lie, unless the Party is *legitimo modo acquietatus*. Noy 116.

Cases of Conspiracy.

There is a nice Case in Conspiracy, &c. for that they falsely procured him to be indicted and imprison'd *quousq;* before such Judges *legitimo modo fuit acquietatus*, and did not say, *inde acquietatus*. 2 *Cro.* 230. Yelverton 161.

To support this Action, the Conspiracy must be proved to be, 1. Malicious. 2. False. 3. Declared by some Prosecution. 4. Voluntary.

A false Confederacy to indict another is punishable by Indictment, tho' nothing is put in Ure. *Roll's Abridgm.* 2 Part. 1 *Lev.* 62.

Information was brought by one Miller, against an Attorney and another, for Conspiracy to take away his Life by indicting him at the Assizes for Felony ; which was found *Ignoramus*. The Conspiracy was proved, and the Judgment was, That the Attorney should be degraded, and cast over the Bar, that both should lose their Ears, and be marked in the Face with the Letter C, to stand on the Pillory, with Papers of their Offences ; to be whipped, and each fined 500*l.*

And

## Conspiracy. Constables.

And this Sentence was most justly executed on them.  
12 *Ja.* 1. *Godbolt* 205.

So where Sir *James Creighton* articted with *Cantrel* to get Sir *Anthony Asbley* indicted for Murder, and then *Creighton* was to beg his Estate of the King, and *Cantrel* was to have one sixth Part of it; whereupon *Cantrel* procured one *Smith*, who was Servant to Sir *Anthony*, to cause his Master and himself to be indicted for Poisoning one *Rice*, but afterward discover'd the Conspiracy, and *Creighton* was fined 1000*l.* and committed; another of the Defendants was fined 300*l.* and to stand in the Pillory, and was burnt with a hot Iron on both Cheeks, with the Letters F and C. See an *Indictment in Conspiracy*, Co. Entr. 173.

## Constables.

4 *Inst.* 123.

**B**Eing to treat of the Office, and not of the Name of a Constable, 'tis not material to enquire from whence the Name is derived.

It is certain the Kingdom is now divided into Shires, and the Shires into Hundreds, tho' the Time when this Division began be uncertain; the common Opinion is, that it was in the Reign of King *Alfred*; but Mr. *Selden* tells us it was before that Time.

High Constables are over Hundreds, Petty Constables for Parishes, &c.

High Constables are now appointed over each Hundred to preserve the Peace, and Petty Constables are appointed for that Purpose in each Town, Village and Parish of every Hundred, to be assisting to the High Constables.

It seems to me that both High and Petty Constables are Officers at Common Law, and the one was long before the Statute of *Winton*, and the other before the Beginning of the Reign of *Edw.* 3. so that such old Statutes, which first mention this Officer, do only recite the Common Law.

Constable must return his Warrant, &c.

A Constable was indicted for not returning a Warrant to him directed about Deer-stealing, tho' he is not named in the Statute 3 & 4 *W. & M.* c. 10. which being removed into *B. R.* by *Certiorari*, it was resolved That Constables are subordinate Officers to Justices, &c. and that where an Officer neglects his Duty, he is indictable for it at Common Law; and in this Case he ought to return his Warrant, or certify what he has done upon it otherwise

otherwise the Prosecutor cannot have the Effect of his Prosecution ; and that though this Indictment concluded *contra pacem*, that did not hurt, because this was only a *Non-feasance*.

Two Justices (*Quorum unus*) may appoint High Constables in *Wales*, by Stat. 34 H. 8. c. 26.

But here in *England* they may be chose at the Leet, either by the Steward himself, or by Presentment of the Grand Jury there ; but this must be warranted by Custom, and where a Court-Leet is usually kept ; and in such Case the Justices of the Peace cannot interpose.

If he is present when chose, and does refuse the Office, the Steward may fine him ; if absent, the Homage may present his Refusal at the next Court, and then he shall be amerced. Also, if he is present, and accept the Office, he may be sworn in the Leet ; if absent, upon Notice given by the Steward, must take the Oath before a Justice ; but you cannot distrain for the Penalty without a Custom.

Where Neglects or Miscarriages are either in keeping such Courts, or chusing them, the Justices at their Quarter-Sessions, or the major Part of them, may appoint and swear a High Constable ; and this is the usual Course at this Time ; but in Case of Refusal, Death, or the Removal, one Justice of the Peace may chuse and swear another. 11 Car. 1. B. R. Trin. Ter. 34 Car. 2. Jones's Rep. 212.

It is true, they may be sworn at any other Time, by Warrant from the Sessions, and they may also be chosen out of the Sessions, by the greater Number of Justices of Division ; but this is not so usual.

It is said the Sessions can appoint a Constable where none before. *Black. 87.*

Petty Constables and Tithingmen are elected by the Parish, and sworn in their Offices in the Court-Leet, and sometimes by Justices of Peace in the Sessions.

But there is some Variation in the Manner of Election, and the Oath and Office of Constables in the City of London, with Respect to other Constables appointed in the Country.

For the City is divided into Twenty-six Wards, and every Ward into the like Number of Precincts, over each of which is a proper Constable ; and all Constables must be Freemen of the City.

They are nominated by the Inhabitants of the Precinct on St. Thomas's Day, and confirm'd, or otherwise at the Wardmoot-Inquest ; and after they are confirm'd, they

High Constable to be chosen at the Leet.

If neglected there, then at Quarter-Sessions.

The Manner of chusing Constables in London, &c.

are



are sworn in their Offices at a Court of Aldermen, on the next *Monday* after *Twelfth-Day*. *Calt. Rep.* 129.

Such as are chosen and admitted to the Office of Constable in *London*, are oblig'd to put the King's Arms, and the Arms of the City over their Door; or (if he live in an Alley) at the End of the Alley towards the Street, to signify that a Constable lives there. *Note*; That a Constable of *London* hath Power to serve Warrants, and execute his Office, if requir'd, throughout the whole City.

As for being qualified for this Office, they ought to be honest, understanding and able Men, and to be Men of Substance, and not of the meaner Sort, and residents where chosen; and if they are not duly qualified, two Justices, upon Complaint, may remove them, and appoint others. And though formerly it was not, yet now it is held, That a Custom for every Inhabitant to serve by Turns, is good; for if it happen on a Woman, she may hire one to serve. *Sid.* 355.

Dissenters chosen Constables may make Deputies for the Execution of the Office, by 1 *W. & M.* and other Persons may make Deputies, though formerly it was doubted, but they must answer for their Miscarriages, unless such Deputies are sworn and allow'd by the Court. *Moor* 845. 3 *Bulst.* 77. 1 *Rolls* 274.

Justices of Peace, Clergymen, Attornies, Infants, Lawyers, the King's Servants in Ordinary, Madmen, Physicians, Ideots, poor, old, and sick Persons, are exempted from Serving. *Cro. Car.* 389. *Noy* 112, 113.

But Tenants in Antient Demesne are not. 1 *Vest.* 344. *Mich.* 21 *Car.* 2.

Where a Constable chose refuses to serve, &c.

If a Constable, after he is duly chose, refuse to serve Justices may bind him over to the Assises, or Sessions, and there he may be indicted and fined; but you must alledge the Place where he was required to take the Oath, and before whom he refused to be sworn, and not a *Sessionem* generally; otherwise it may be quash'd. *Style* 124. 1 *Keeble* 418. 1 *Mod.* 24, 13. *Allen* 78. 2 *Rolls Rep.* 78. 2 *Saunders* 291. *Sid.* 272. *Style* 394.

Actions against a Constable must be laid in the proper County.

Actions brought against him for any Thing done in the Execution of his Office, must be laid in the proper County where the Fact is supposed to be done, and he may plead the General Issue, and give the Special Matter in Evidence; and if the Plaintiff is Nonsuit, or discontinues, or a Verdict for the Defendant, he shall have double Costs. 7 *Jac.* 1. c. 5. 21 *Jac.* c. 12.

If a Constable die, or move out of a Parish, two Justices may chuse and swear another; and he is to continue in the Office 'till next Leet or Sessions, and the Steward or Justices may either approve him, or appoint another, and swear him. This Office is to continue for one Year; and if longer, Justices in their Sessions may discharge him.

The Sessions may remove a High Constable as well as a Petit Constable, for they are the best Judges in these Cases:

If any one abuse or affront a Constable in the Execution of his Office, either by Word or Action, he may have him bound to the Good Behaviour for such his Offence, and fined before the Justices in their Sessions, as they see fit upon Proof. *Fitz. 207. Crompt. 135.*

*Note;* A Man is to serve the Office of Constable in Respect of his personal Abode, and not in Respect of his Lands.

Tithingmen, Borsholders, Thirdboroughs, Borough-heads, Chief Pledges, Headboroughs, &c. appointed in a Town or Parish having also a Constable, cannot principally concern themselves in any Matter, the Constables being Head-Officers, though in the Absence of the Constable, they are chiefly to attend the Service: And there are many Things which a Constable has Power to do, that Headboroughs and Tithingmen cannot intermeddle with. *Dalt. c. 1. f. 34.*

Where there is a Constable, Tithingmen, &c. are not principally to concern themselves.

But in Towns and Parishes where there are no Constables, and that the only Officers for the Peace there are Headboroughs, Thirdboroughs, Borsholders, or such other, in such Cases their Power and Authority is declar'd to be equal with the Constable, in all such Things, and their Office is in a Manner all one; and divers Statutes do appoint Offenders to be punished by the Constable, or other inferior Officers, which must needs be the Tithingmen, &c.

But where there is no Constable, they act as Constables.

High Constables, on their receiving Monies from Church-wardens, assessed on any Parish for Relief of poor Prisoners, are to pay over the same to the Collectors appointed by the Justices at the Quarter-Sessions, on the Penalty of 5 *l.* *Stat. 14 Eliz. c. 5.*

What High Constables may do.

They are also to pay over Monies receiv'd for the Relief of poor Prisoners in the *King's Bench*, and *Marshall's*, under the Penalty of 20 *s.* And so of Money receiv'd for the Relief of maimed Soldiers and Mariners, on Pain of 40 *s.* *Stat. 43 Eliz. c. 3.*

They

## Constables.

They are likewise to pay Monies rated at *Easter Sessions* for the Use of the Poor, to the Treasurers, under the Penalty of 20*s.* by *Stat. 43 Eliz. c. 2.*

They are to pay Petty Constables the Allowances ascertained in Certificates made by Justices for passing of Vagrants, and no more, taking the Certificates and their Receipts, which Certificates and Receipts are to be allow'd the chief Constable in his Account by the Treasurer of the County. *Stat. 12 Ann. c. 23.*

High Constables paying Money for passing Vagrants, without the Petty Constables producing a Receipt for such Vagrants, to forfeit 20*s.* *Stat. 12 Ann. c. 23.*

High Constables are to issue Precepts to Petty Constables, to prepare Lists of Jurors, make Presentments of Offences, and levy Gaol-Money, &c.

A Person disobeying the Order of Justices for taking the Office of Constable upon him, was committed to Gaol by the Justices at the Sessions; the Person disobeying alledg'd, that he was not within the Liberty; and it was adjudg'd, that the Commitment was wrong, for he ought to have been indicted upon his Refusal; and if he was found to be within the Liberty, they might then assess a Fine, and commit him 'till Payment. *Cro. Car. 566. Hill. 15 Car. 1. B. R. Crawley's Case.*

Where a Leet is orderly kept, there the Sessions has nothing to do to chuse Constables.

But where there is a Neglect, there the Sessions may interpose.

Where a Leet is orderly kept, and there is a due Election of this Officer from Time to Time, and no Neglect or Miscarriage therein, there the Justices are not, in or out of their Sessions, to meddle with the Choice or Removal of a Constable; and if they should intermeddle in this Case, or remove a Constable settled by the Leet, according to the Custom of the Place, the Leet may put him in again, and the *K. B.* must decide the Difference. *Trin. 9 Jac. 1. B. R. Style's Rep. 362. 1 Bulst. 174.* But it is agreed, That where there is a Neglect or Miscarriage in a Court-Leet, touching the making a Constable, there the Sessions may interpose and supply it. The Lord also may lose his Leet by this Neglect. *Style 71. Mich. 22 Car. B. R.* And the Justices also are to make the High Constables of Hundreds, where there is not a Leet for the Hundred that hath constantly done it. *Trin. 9 Jac. 1. B. R.*

Constables, or other Officers, may lay no Hands on Two intending to fight, 'till Weapons are drawn, or an Assault made. *Lamb. 132.*

Constable hurt in parting an Affray may have an Action against the Affrayer; so may any other Officer; but the Affrayer can have none against them. *Lamb. ibid.*

Constable



Constable or Officer presented at Sessions for not endeavouring to part an Affray, being present, shall be heavily fined. *Lamb. ibid.*

Constables may make their Deputies within the Stat. 7 Jac. 1. *Felp's Case, Mich. 13 Jac. 1. B. R. Phillips con. Winchcomb, Moore p. 845. 3 Bulstrode 77.*

Constables may make Deputies within 7 Jac. 1.

A Constable was bound to his Good Behaviour for arresting one on a Sunday in the Church-yard, after a Certiorari out of the K. B. *Show. 1 Cr. 603.*

A Constable upon a General Warrant may carry an Offender to any Justice; otherwise it is if the Warrant be Special. 1 Co. 5 Rep. f. 59. *Foster's Case.*

Antiently both High Constables and Petty Constables were appointed and sworn by the Sheriff in his Turn; and if a Constable died, his Place was to be supplied by the Leet, or Justices of Peace.

But now by the Stat. of 14 Car. 2. c. 12. in Case of the Death of Constables, or their Removal out of the Parish, two Justices of the Peace may swear new ones, they to continue until the next Leet, or until the Sessions, where the same shall be either approved, or others appointed; and if for want of a Leet, they hold over a Year, they must be discharged, and others put in their Places. By the same Statute, Constables, &c. being out of Purse, may make Rates upon the Occupiers of Lands, Inhabitants, and others chargeable, which being confirmed by the Justices, may be levied by Distress, by the Warrants of two Justices, &c.

In Case of Death, or Removal of a Constable, two Justices may swear another.

A Constable was indicted for refusing to pursue Hue and Cry for a Burglary. *Cro. Eliz. 654. Crowder's Case.*

A Constable is an Officer of the Quarter-Sessions, and is bound to obey their Orders. *Black. 86.*

By 22 Car. 2. c. 8. Constable is to search if any one use any Measures but *Winchester*; and if he finds any unlawful Measure, to break the same.

A Constable hath no Authority to commit any Person to Prison, before he carries him before a Justice of Peace, unless for Breach of the Peace done in his Presence. *Saunders 98.*

A Constable may be indicted for disobeying a Justice of Peace his Warrant. *2 Roll's Rep. 78.*

And he may be presented for refusing to be sworn a Constable. *Mod. Rep. 24.*

B. R. order'd an Action to be brought against a Constable for committing one to the Compter without a Cause.

Several Constables and Parish-Officers, who had refused to give Accounts upon Oath of the Names of the

## Constables.

Inhabitants, House-keepers and Inmates in their several Parishes, were tried and fined 100*l.* a-piece, 8 Sept. 1684.

One may be indicted, who being chosen Constable, and warned before a Justice of Peace to take his Oath, and voluntarily neglects or refuses to take it. *Allen* 78.

A Constable has Power through the whole Parish and Division. 18 *Car.* 2. The Case of the Inhabitants of *Shadwel.*

Constable of one Town may execute a Warrant in any other Town of the same County.

A Constable of one Town may execute a Warrant in any other Town in the same County; by Chief Justice *Hale*, Trial *per Pais* 201.

A Constable may make a Deputy. 1 *Bulst.* 77. 1 *Roll's Rep.* 271. 1 *Roll's Abridg.* 591. *Moor* 845. *Cr. Car.* 585. He that is sworn, tho' hir'd, is the Constable. 1 *Sid.* 355.

A Constable cannot justify the Breaking of any Man's House in the Night-time, unless it be in the Case of Felony. 1 *Bulst.* 146. 5 *Co.* 92. *Seyman's Case.*

If a Constable takes a Man that dangerously wounds another, and suffers him to escape, and then the Party wounded dieth, if it be voluntary, it is Felony in the Constable, if negligent only, yet will he be, at least heavily fined. 11 *H.* 4.

A Constable may break open a Door to take an Offender, where a Felony is committed, or dangerous Wound given. *H. P. C.* 93.

If there be an actual Breach of the Peace, the Constable may imprison the Party in the Stocks, in the Gaol or in his House, 'till he can bring him before a Justice of Peace. *H. P. C.* 92.

A Constable cannot be sued out of the County where he is a Constable, for a Thing done by him in Execution of his Office. *Style* 393.

A Constable was indicted for refusing to execute a Justice of Peace his Warrant to apprehend one for a Contempt. *Hill.* 16 *Jac.* 1. 2 *Roll's Rep.* f. 78.

An Alderman of *London* chosen Constable at a *Leet* *Essex*, discharged upon a *Certiorari*, because he is bound as Alderman to be present in *London* for the Government of the City, *Trin.* 16 *Car.* 1. *Jones's Rep.* 462. Alderman *Abdy's Case*, *B. C. Cro. Car.* 585. pl. 3.

The High Constable of the Hundred of *Wanslead* discharged from being Collector of Money for the Poor of the Parish of *St. Peter Poor, London*, during his Office of Constable. *Jones's Rep.* p. 46. *Pasch.* 28 *Car.* *B. R.*

T. was indicted for not going before a Justice of Peace to take the Oath of an Headborough, to which he was chosen at a Leet, and the Indictment was quash'd, because it did not appear that any Notice was given him to go before the Justice. *Trin. 24 Car. 1. B. R. Style 124. Rex ver. Trigg.*

S. was presented at the Leet to be Constable, and the Steward refused to swear him; upon that, the Justices at Sessions made an Order that S. should serve the Office, and swore him accordingly. On a *Certiorari* to remove this Order, Exception was taken, because the Justices had intermeddled with a Thing which was not within their Cognisance; for it was said, That the Appointment of a Constable belongs to the Leet, and the Lord of the Leet (at the Peril of the Forfeiture of his Leet) ought to take Care that a Constable be there chosen, and that he may be by his Steward. But the Exception was disallow'd by the whole Court, for the Election of a Constable properly belongs to the Homage. And although the Justices of Peace have not originally the Making of a Constable, yet that is a Matter of the Peace which is within their Jurisdiction, and they may examine this Matter in their Sessions. And as to the Swearing of the said Constable, any single Justice of Peace may do that; and the Order was confirm'd. *Trin. 34 Car. 2. B. R. Jones's Rep. 212. Rex ver. Stevens.*

Where a Constable was chose at the Leet, and the Steward refused to swear him.

In Cases of Treason, Felony, or Breach of the Peace, a Constable, by Warrant from a Justice of Peace, may break open a House to apprehend the Criminal; but he ought first to require the opening the Doors, and to inform the Person for what Purpose he came thither; and he may justify the Detaining of an Offender for a Day without a Warrant, by the Command of a Justice of Peace. And in conveying a Felon, either before a Justice, or to Gaol, he may lock him in the Stocks, if unlawfully, to prevent his Escape. *Dalt. 204, 342.*

When a Constable may break open Doors.

If a Constable arrests a Felon, and carries him to the County Gaol, but the Gaoler refuses the Prisoner, the Constable must not let him go; if he does, it is an Escape, adjudg'd *Hill. 10 H. 4.*

A Constable may commit one for Breach of the Peace in his Presence, without carrying him before a Justice; and he may take up suspected Persons who walk in the Night, or keep suspicious Company. *Savil 98. 13 H. 7.*

A Constable must not dispute any Warrant sent to him by a Justice, but must execute the same; and if the Justice exceed his Authority, generally the Constable is excused:



excused: But if a Justice of Peace send his Warrant to be executed where he hath no Jurisdiction, or in a Matter wherein he is no legal Judge, if the Constable execute it, he may be punish'd. And so it is where the Warrant is mistaken in the Penalty, or commands the Constable to act out of his Precinct. *Dalt.* 437.

One may be bound to his Good Behaviour for Contempt of the Justice's Warrant.

A Man may be bound to the Good Behaviour for any Abuse, or Contempt to the Justice's Warrant, and be indicted and fined for it. And a Constable need not shew his Warrant; but if he acquaint the Party with the Contents of it, it is sufficient: But let him take care how he apprehends a Person without a Warrant; for if he does, it will be false Imprisonment, though he obtain one afterwards. *Co.* 69. *Crompton* 149.

If a Constable, having apprehended a Criminal, permit him to go at large upon his Promise to return and appear before the Justices, he cannot by Virtue of his first Warrant retake him; but if the Party make his Escape, the Constable may pursue him, though fled into another County, and bring him back to the Justice of Peace. *Crompt.* 148.

Where there are two Persons of the same Name.

If it happen that there are two Persons of one Name, and the same Addition, and the Constable takes the wrong Person, it is no false Imprisonment; but if the Warrant be against a particular Person by Name not the Offender, and he apprehends another who is really the Offender, such Taking is wrongful, and the Party may have his Action of false Imprisonment; but he will recover but little Damages. *Dyer* 244.

Where a Constable hath a Warrant to execute for Sureties of the Peace, and afterwards receives a *Superseas* from the Court of Chancery, or from another Justice to discharge the Sureties, if he still insists upon the Party's finding Sureties, and he refuses, whereby he is detain'd, it is false Imprisonment.

Watchmen refusing to serve to be bound to their Good Behaviour, &c.

Constables are to cause Night-watches to be set from *Whitsontide* till *Michaelmas*, which Watches are to be composed of the Inhabitants of the Parish, and to watch from Sun-set to Sun-rising; and if such Persons refuse they may be bound to the Good Behaviour by a Justice on Complaint of the Constable. 13 *Edw.* 1. The Watchmen are to apprehend Night-walkers, suspected Persons, arrest Strangers, &c.

Offender must bear the Charges of his carrying to Gaol.

A Constable, by Warrant from a Justice of Peace may sell the Goods of an Offender apprehended, to discharge the Expence of carrying him to Prison, his Goods being first appraised by some Inhabitants of the Place. 3 *Jac.* 1. c. 10. And in Case the Offender has

no Goods, then the Town where he was apprehended must be at this Expence; and the Constable, with three or four of the principal Inhabitants, may impose a Tax on every Inhabitant according to his Estate in Lands, and after the Rate of 5 *l.* for every Hundred Pounds of the personal Estate of a Tradesman, which being allow'd by a Justice, the Constable by Warrant may levy it on those who refuse; and if the Inhabitants refuse to make a Tax, two Justices may by Warrant compel them to it. 3 *Jac.* 1.

If a Constable be sued for any Thing done by Virtue of his Office, he may plead the General Issue, and give the Special Matter in Evidence, &c. and if the Plaintiff be nonsuited, he shall have double Costs. 7 *Jac.* 1. *cap.* 5.

Constable sued  
may plead the  
General Issue.

Thus having touch'd a little on the Power and Duty of Constables in general, I shall proceed to treat of his Duty in particular; but first I shall give you his Oath, 'till which is administred, he is not properly in his Office.

## The Oath of a Constable.

**Y**OU shall well and truly serve our Sovereign Lord King George, and the Lord of this Leet, (if sworn in a Court-Leet) in the Office of a Constable in and for the Hundred of A. or Parish of, &c. for the Year ensuing, or until you shall be thereof discharged according to due Course of Law: You shall well and truly do and execute all Things belonging to the said Office, according to the best of your Knowledge.

So help you God.

This Oath is now administred for the Shortness of it, but the Oath which was formerly given him was very long, and related to several Articles, the chief of which are as follow, of which I shall treat in few Words:

|               |                 |
|---------------|-----------------|
| Affrays.      | Coventicles.    |
| Ale-houses.   | Customs.        |
| Arms,         | Deer-stealing.  |
| Arrests,      | Deserters.      |
| Bakers,       | Distress.       |
| Bawdy-houses. | Dogs. See Game. |
| Bridges.      | Drunkenness.    |
| Carriages.    | Dyers.          |
| Cattle.       | Escapes.        |
| Clothiers.    | Excise.         |

## Constables.

|                                  |                     |
|----------------------------------|---------------------|
| Felons.                          | Militia.            |
| Fish.                            | Ministers distur'd. |
| Forcible Entry.                  | Papists.            |
| Game.                            | Plague.             |
| Gaming.                          | Presentments.       |
| Gaol.                            | Prisoners to Gaol.  |
| Hawkers.                         | Riots.              |
| Hedge-breaking.                  | Rogues.             |
| Highways.                        | Sabbath.            |
| Horses.                          | Servants.           |
| Hue and Cry.                     | Shoe-makers.        |
| Inns.                            | Soldiers.           |
| Juries.                          | Swearing.           |
| Labourers. <i>Vide</i> Servants. | Tithes.             |
| Land-Tax.                        | Vagabonds.          |
| Malt.                            | Watches.            |
| Measures.                        | Warrants.           |

And first Constables are to command Affrayers to depart, to call others to their Assistance; to suppress Affrays, and keep the Peace; put Affrayers in the Stocks 'till they can carry them before a Justice; to pursue Affrayers into another County, &c. All this they may do *ex Officio. Dalt.* 33, 35. *Lamb.* 141. 4 *Co.* 4, 9. *Lamb.* 335, &c.

If one assault another in his Presence, or for whatever is a Breach of the Peace, he may carry the Offender before a Justice of Peace, without a Warrant; but if the Fighting is over, he must have a Warrant, and this is to find Sureties for his Good Behaviour.

## Affrayers.

If the Quarrelling or Fighting is not in his Sight, and he is inform'd of it, and refuses to go to keep the Peace, he may be presented by the Grand Jury at Sessions, and fin'd.

If Affrayers by him commanded to depart refuse, or make any Resistance, he may justify the Beating of them, may call others to his Assistance, and if either he or they happen to be kill'd, it is Murder.

He may break open the Doors to see the Peace kept.

If any Person be wounded in fighting, he may carry the Offender before a Justice of Peace, who may bail or commit, &c.

*Owen* 105. *Moor* 284.



If the Constable doth not levy 20*s.* to the Use of the Poor, upon such who keep unlicens'd Ale-houses, which Distress he may sell after three Days; and if no Distress, then if he do not whip the Offender, one Justice may commit the Constable without Bail, until the Alehouse-keeper is punish'd, or until the Constable pay 40*s.* to the Use of the Poor.

Ale-houses.

He is to levy the Penalty on Alehouse-keepers selling less than Measure, &c. or forfeit 40*s.* to be levied by Warrant from one Justice; and if no Distress, to be committed; and not levying Penalty for Tippling, forfeits 10*s.* 1 *Jac.* 1. c. 9. 1 *Car.* 1. c. 14. 11 & 12 *W.* 3. c. 15.

Upon those convicted of Drunkenness, he must levy 5*s.* for the Poor; if the Party is not able to pay it, he must sit in the Stocks six Hours, &c.

Not delivering the Poor's Moiety of the Penalty of 6*s.* 8*d.* per Barrel, for selling Ale to an unlicens'd Ale-house-keeper, over to the Church-wardens, &c. and they not distributing it among the Poor, forfeit double the Value. 4 *Jac.* 1. c. 4.

He may take Arms from them who ride, or go unlawfully arm'd, in Terrour of the People, and may carry such Persons before a Justice of Peace to find Sureties. *Dalt.* 35.

Arms.

They must assist such Persons as have a Warrant from the Lord-Lieutenant, or Deputy, to search for Arms, &c. which must be in the Day-time, unless in Towns, and if resisted, may enter with Force. And High Constables, Petty Constables, &c. shall be assisted by others.

His Majesty's Servants, or Officers, Persons pursuing Hue and Cry in Case of Felony, and other Offences, have lawful Authority to bear Armour on Weapons. *Dalt.* c. 9. 3 *Inst.* 162.

Arrests.

Private Persons arresting others in dangerous Affrays, on Suspicion of Murder, Felony, Night-walkers, &c. which they may justify, are to deliver them over to the Constables, &c. *Dalt.* 338.

## Constables.

Bakers.

The Penalties inflicted on Bakers by Mayors, Justices, &c. for making Bread deficient in Weight and Goodness, &c. are to be levied by a Constable.

Bawdy-houses.

A Constable may, with others call'd to his Assistance, enter Bawdy-houses, and arrest Persons with lewd Women for Breach of the Breach, to be bound to their Good Behaviour. *Mich. 13 H. 7.*

Bridges.

Where a common Bridge is in Decay, and it cannot be known who, or what Lands are to repair it, the Constable, and two of the most able Inhabitants in the Parish, must assess, and four Justices must allow such Assessment.

Carriages.

Constables, on Justice of Peace his Orders, are to provide Carriages on the marching of Soldiers, at the Rate of 1*s.* per Mile for four Oxen, and two Horses, or for six Oxen, and for a Cart and four Horses 9*d.* per Mile. Stat. 3 Geo. 1. cap. 3.

Cattle.

Constables, Tithingmen, &c. are to seise all Cattle, Sheep, &c. imported from *Ireland*, or other Parts beyond the Seas, (except six Hundred yearly from the *Ile of Man*) as forfeited for the Use of the Poor. *English*, or other Cattle intermix'd with *Irish* Cattle, shall be deem'd *Irish* in all Respects. 32 Car. 2. cap. 2.

Clothiers.

High Constables may hear and determine Complaints of Clothiers and their Work People; search for and seise Ropes, Engines, &c. for the stretching of Cloth by 4 Edw. 4. & 39 Eliz. c. 11.

Conventicles.

Constables, Headboroughs, &c. are to levy the Fines imposed on those who shall be present at Conventicles; and by Virtue of a Justice's Warrant, may enter such Houses, break open Doors, upon their being refused Entrance, and take into Custody Persons unlawfully assembled, &c. 22 Car. 2. c. 1.

Constables, &c. knowing or being credibly informed of any Conventicle within their Precincts, and not giving Information thereof to some Justice of Peace

Peace, or chief Magistrate, and endeavouring to convict the Parties, forfeit

5*l.* *ibid.* Protestant Dissenters are excepted out of this Act by 1 *W. & M. c.*

24. But if any Assembly of Dissenters shall be held in any Place with the Door lock'd or bolted, during the Time of Service, they are liable to Prosecution as others, notwithstanding taking the Oaths, &c. directed by the Act 1 *W. & M. c. 24.*

Conventicles.

Any Person sued for acting according to the Stat. 22 *Car. 2. c. 1.* may plead the General Issue, and give the Special Matter in Evidence, and shall recover treble Costs. 22 *Car. 2. c. 1.*

Constables must upon Request assist such Persons who have a Warrant from the Lord Treasurer, Barons of the *Exchequer*, or chief Magistrate of Ports, to search for Goods which have not paid Custom; and he may (if within a Month after the Offence) enter into any House in the Day-time, and if resisted, break it open.

Customs.

He must be assisting to all Persons appointed by the King to collect or manage his Customs; and if the Custom-house Officer, or any acting in Aid of them, shall be sued, &c. they, their Heirs, &c. may plead the General Issue, and give the several Acts relating to the Customs, or any of them, in Evidence. 14

*Car. 2. c. 11.*

Deer-stealers forfeit 20*l.* being convicted before one Justice, either by Confession, or Oath of one Witness, of Courting or Hunting Deer in any Place enclosed for keeping Deer, and 30*l.* for every Deer, taken, wounded and kill'd.

13 *Car. 2. c. 10. 3 & 4 W. & M. c. 10.*

These Penalties the Constable is to levy by Warrant from the Justice of Peace, by Distress, or may detain an Offender not exceeding two Days, if he do not presently pay the Money due upon Conviction, 'till he can make a Return of his Warrant of Distress.

Deer-stealing.

He



## Constables.

Deer-stealing.

He may enter any suspected Place by a Warrant from the Justice of Peace, and carry away Venison, Skins of Deer, Toils, &c. and the Offender before the Justice of the Peace to give an Account how he came by them.

Pulling down Pales or Walls of Parks, is subject to the Penalty of 3 £ 4 W. & M. c. 10. for killing Deer, viz. 30l. And Persons convicted of Deer-stealing, are to enter into Bond of 50l. to the Person injur'd, for the future Good Behaviour, before their Discharge.

Deserters.

Any Constable, &c. has Power to take up a Person suspected of Desertion, and to bring him before a Justice; and if upon Examination, it shall appear that he is a Listed Soldier, the Justice shall commit him to the County Gaol, and give an Account thereof to the Secretary at War.

1 Geo. c. 3.

Distress.

Constables are to assist Landlords in taking Distresses for Rent in Arrear; and in the Appraisement of the Goods, and Sale, &c. if the same are not replevied in five Days after they are distrain'd.

N. B. The Under-Sheriff, Constable &c. have power to administer an Oath to two indifferent Men, as follows:

## Appraiser's Oath.

**Y**OU do Swear, that you will faithfully Appraise and Value the Goods now taken in Distress, and mentioned in the Inventory to you shewn, as between Buyer and Seller according to the best of your Skill and Understanding; you shall not through Partiality, Interest or otherwise, over or under Estimate the said Goods; but impartially do your Duties herein.

So help you God.

Dogs. See Game.

Drunkenness.

Constables are to levy the Penalty 5s. on Drunkards, for the Use of the Poor, or shall forfeit 10s. Stat. 4 J. 1. c. 5. 21 Ja. 1. c. 7.

Constable

## Constables.

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Constables are to assist Searchers of dyed Cloaths, to enter and examine whether any Cloths or Stuffs are deceitfully dyed, and the Penalties inflicted on Dyers for dying Cloth deceitfully, are to be levied by Constables by Warrant of two or more Justices. 13 Geo. 1. c. 24.

Constables are to attend Officers of Excise on Request, and enter with them Brewhouses, private Places, &c. for Discovery of Frauds; and by Warrant from Justices, they are to levy the Penalties on Offenders against any Law of Excise, by Distress, &c. 12 Car. 2. c. 23. 7 & 8 W. 3. c. 31.

A Constable permitting a Felon to escape before arrested, is Guilty of a Misdemeanor, for which he may be indicted and fined; (a) and if the Felon be actually in Custody, and then he voluntarily permits him to escape, it is Felony in the Constable; but if the Escape be involuntary, it is only finable. And a Constable may discharge any Person arrested on Suspicion of Felony only, where no Felony is committed; but otherwise he must not discharge him, tho' he knows the Party is Innocent; but it must be done by due Course of Law. And he may put a Felon into the Stocks, and lock him in, or put Irons upon him, or pinion him, to prevent Escapes when he is about to carry him before a Justice of Peace, or to Gaol.

(a) But it must set forth for what Felony he was taken, and when it was committed. Cro. Eliz. 752. Cro. Eliz. 209.

Constables, *ex officio*, are to apprehend Felons, call others to their Assistance, apprehend Persons upon Suspicion, and carry them before a Justice, &c. and any Person may arrest one who has committed Felony. The Constable may justify the Breaking open a House to take a Felon; and if the Felon fly, he is to make an Inventory of his Goods, and send Hue and Cry after him, and the Neglect thereof is finable by the Justices.

If upon such Flight he is apprehended in another County, the Felon must be committed

## Constables.

Felons.

committed where taken, and not where the Fact was done.

Two Justices (*Quorum unus*) are to set a Tax upon every Parish in a Hundred, where Damages are recovered against any one or more Inhabitants of that Hundred, upon the Statute of *Winton*, and the Constables of every Parish are to set a Tax upon every Inhabitant of those Parishes, where they refuse to contribute, and may levy the same by Distress, &c.

Fish.

Constables are to levy the Penalty of 10s. for fishing in a River without the Owner's Consent, or on those who Fish with unlawful Nets within five Miles of the Sea-Coast; and to search for unlawful Nets, Engines, &c. 13 & 14 *Car. 2. c. 24.* & 30 *Car. 2. c. 9.*

Forcible Entry.

Constables refusing to give Assistance to Justices of Peace in removing forcible Entries, or carrying Offenders to Gaol, shall be committed and fined. 5 *cap. 7.*

Game.

Constables are to carry Higlers, Chawmen, Victuallers, &c. before a Justice who have in their Custody any Hare, or other Game; and by a Justice's Warrant are to search suspected Houses for Game, &c. They may carry Persons not qualified to kill Game, before a Justice for keeping Greyhounds, Setting Dogs. Game-keepers are to be entered with the Clerk of the Peace. 22 & 23 *Car. 2. c. 25.* 4 & 5 *W. & M. c. 1.* 5 *Ann. c. 14.* 3 *Geo. c. 11.*

Gaming.

He must once a Month search Houses where unlawful Games shall be kept, as Tables, Cards, &c. and they may commit the Master of the House, and the Gamesters, 'till they give Surety not to do the like again. If the Constable Neglects, he forfeits 40s. for every Default. 33 *Hen. 8. c. 9.*

Gaol.

If Gaolers refuse to receive a Felon, the Constable may either secure the Prisoner in his own House, or carry



## Constables:

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back to the Town where apprehended, and the Town shall be chargeable for the Keeping of him 'till the next Gaol-Delivery, where the Gaoler shall be punish'd. Constables are to levy Money for Reparation of Gaols, by Warrant from Justices.

11 & 12 W. 3. c. 19.

Constables refusing to assist in putting the Laws in Execution against Hawkers, &c. forfeit 40s. and any Person may seise a Hawker 'till he produce his License. 8 & 9 W. 3. c. 25.

Constables are to whip Hedge-breakers, Robbers of Orchards, &c. on their not making Satisfaction order'd by a Justice; if the Constable neglect, then he may be committed without Bail, until the Offender is whipp'd. 43 Eliz. c. 7. Procurers and Receivers of stolen Wood are liable to the same Punishment.

They may apprehend Persons carrying Bundles of Wood, suspected of Hedge-breaking, or of having in their Possession any Underwood, Poles, young Trees, Gates, Stiles, &c. and carry them before a Justice: Not giving a good Account how they came by the same, to make Recompence, &c. or be whipp'd by the Constable. Buyers of stolen Wood to pay treble the Value to the Party from whom taken.

By 3 & 4 W. & M. c. 12. Constable and Inhabitants must yearly meet the Day after *Christmas* Day, to make Lists of Persons qualified to be chose Surveyors of the Highways; which Lists the Constable must return to the Justices at a Special Sessions, on the Third of *January* following, under Penalty of 20s.

Constables are to be aiding and assisting in putting the Acts in Execution relating to the Repairing the Highways, on Penalty of 40s. And are to levy the Penalties relating to Scavengers, and Defaults in cleaning the Streets of *London*, &c.

Constables

## Constables.

Horses.

Constables are to be likewise assisting in driving of Commons, Forests, &c. of Horses and Cattle, on Pain of 40s. And also of seizing of Stone-Horses put into Commons among Mares under-sized. *H. 8. c. 13.*

In Fen Grounds the Horses may be but Thirteen Hands High.

A Constable is to raise Hue and Cry upon Notice, and describing the Felon and telling him which way he is gone and for this Purpose he is to call upon the Parishioners to assist him in the Pursuit of the Felon to the next Constable and he to the next, who is to do as the first, and so from Town to Town, and County to County, &c. and in the mean Time the first Constable is to make an Inventory of the Felon's Goods, in the Presence of his Neighbours. If he Refuse to pursue the Felon, he may be indicted, &c. but the Place where he gave Notice must be set forth in the Indictment. *Cro. Eliz. 654, 655.*

Pursuers of the Hue and Cry may search suspected Houses, and arrest suspicious Persons.

Hue and Cry.

Inhabitants of any Hundred, where Hue and Cry is made, neglecting to pursue, shall answer one Moiety of the Damages recoverable against the Hundred where the Robbery is committed. *Stat. 27 Eliz. c. 13.*

Where any one of the Robbers is apprehended, or where the Action is prosecuted within one Year after the Robbery committed, the Hundred is not chargeable for the Robbery. And the Hue and Cry shall not be judged Legal unless the Pursuit be both by Horse and Foot. *Dyer 370.*

He who goeth not at the Command of the Constable, upon Hue and Cry, shall be grievously fined and imprisoned. *2 Inst. 172.*

Where Damages are recovered against one, or some few Inhabitants of the Hundred, for a Robbery, and the rest refuse

Co. 7 Rep. 6.

Hue and Cry.

to contribute thereto, two Justices of the Peace (*Quorum unus*) dwelling within or near the Hundred, may, for the levying thereof, set a Tax upon every Parish within that Hundred; according to which the Constables and Headboroughs of every Town must Tax the particular Inhabitants within their Limits, and then levy the Money upon such as refuse by Distress and Sale of their Goods, restoring them the Overplus; and after the Money is gather'd, they are to deliver the same to the Justices, or some of them who made the Rate, within Ten Days. Stat.

27 Eliz. c. 13.

Constables on Complaint may cause Inn-Keepers to be indicted for refusing to lodge a Traveller, &c. 10 H. 7. Or the Traveller may prosecute the Inn-Keeper in any of the Courts at *Westminster*, and recover Damages. But then ready Money must have been offered beforehand, if requir'd. Co. 9 Rep. 87. b.

N. B. Upon any Disputes in an Ale-house or Tavern, &c. about paying the Reckoning, and the Parties offer to make their Escapes without paying, if there be no Swords drawn, Beating Wounding, or visible Breach of the Peace, the Constable is not bound to go though sent for, nor is it warrantable for him to arrest and carry them before a Justice, unless a Warrant be put into his Hand; for this is only a Debt, and the Party aggriev'd must bring his Action for the Credit he gave for the Victuals or Drink, &c. being freely deliver'd by his Consent; and those Constables, which are over officious to trouble themselves this way, may bring themselves into Trouble, and be laugh'd at by those who set them on Work.

They are to give in to the Justices at *Michaelmas* Sessions yearly, Lists of Persons qualified to serve on Juries. Neglecting to return Lists, forfeit 5 l. to the King. Stat. 7 & 8 W. 3. c. 12.

But



## Constables.

But by Stat. 3 Geo. 2. after they have made their Lists, they may subscribe them in the Presence of a Justice, and attest them upon Oath to the best of their Knowledge; which Lists being sign'd by the Justice, shall be deliver'd by the Constable to the High Constable, who is to deliver them in to the Quarter-Sessions in open Court, attesting on Oath their Receipt of them from the Petty Constables, and that no Alteration has been made since his Receipt thereof; and the Lists so deliver'd in shall be as effectual as if deliver'd in by the Petty Constables.

Juries.

The Qualifications are, 80*l.* *per Ann.* Freehold for a Grand Juryman, and 10*l.* *per Annum* for a Petty Juryman, except in Corporations, where a Freeman worth 40*l.* in Goods may serve on the Petty Jury. 7 & 8 W. 3. c. 32.

High Constables are to issue their Precepts to Petty Constables, to prepare such Lists, by Virtue of a Warrant from Justices in the Sessions, under the Penalty of 10*l.* 3 & 4 Ann. c. 18.

Labourers.

In Harvest-Time a Constable may seize Artificers, and ordinary Tradesmen on Work, and put those in the Stocks for two Days and a Night who refuse. Constable neglecting his Duty herein forfeits 40*s.*

Stat. 5 Eliz.  
c. 4.

Land-Tax.

Constables are to give Assistance in collecting the Land-Tax, taking of Distresses, &c. when refused Payment. 2 W. & M. &c.

Malt.

They have Power to search for bad Malt; and if they find any deceitfully made, or bad mingled with good, they may, with the Advice of a Justice, cause the same to be sold at such Rates as the Justice shall please. 2 & 3 Ed. 6. c. 10.

Measures.

Constables are to search and examine if any Persons use other Measures than the Winchester Measure, and agreeable to the Standard. 22 Car. 2. c. 8.

Militia.

They are to levy the Money charged upon any Person by the Lord Lieutenant, or his Deputies, for the providing Arms for Horse and Foot Soldiers; and if no Distress is to be found, may, by Warrant from the Lord Lieutenant, &c. commit the Offender until he make Satisfaction.

Minister disturbed.

A Constable, *ex officio*, may apprehend one disturbing a Minister, and carry him before a Justice of Peace.

Plague.

He may command any Person infected to keep within his House; and if after such Command he wilfully go abroad, having a Sore upon him, it is Felony; and if no Sore, he may be punish'd as a Vagabond, and bound to his Good Behaviour for a Year. If he neglects to levy the Money appointed by Justices to relieve the Poor infected, forfeits 10*s.* for every Offence. Stat. 1 *Jac.* 1. c. 31.

Popish Recusants.

Constables are to certify to the Quarter-Sessions the Names of Popish Recusants Convict; returning to the Places of their Birth. 35 *Eliz.* c. 1.

And they are to present once a Year those, who absent themselves from Church for the Space of a Month: Neglecting, to forfeit 20*s.* 7 *Jac.* 1. c. 2.

Presentments.

They are also at the Quarter-Sessions and Assises to present all Things against the Peace, and belonging to their Offices, mention'd in the Particulars of their Oath: But they commonly make Returns formally, and bring them to a Justice to sign, and carry them to the High Constable, who makes the Oath that he had them from the Petty Constable.

Carrying Prisoners to Gaol.

In conveying a Felon, either before a Justice, or to Gaol, he may lock him in the Stocks, if unruly, to prevent his Escape.

The House of Correction, and the Compters of the Sheriffs of London are the common Prisons for Offenders for the Breach of the Peace, &c. To the last, Constables may convey Persons taken up by the Watch late at Night, and

## Constables.

Carrying  
Prisoners to  
Gaol.

who are unruly or suspicious. But they ought to be very careful who they send thither for Fear of Actions for false Imprisonment, whereby they may be liable to pay Damages, &c.

A Constable is *ex Officio* to suppress all Riots, &c. and to commit the Offenders, and all such who break the Peace. Stat.

17 R. 2. c. 8.

Constables, Tithingmen, &c. are to whip wandering Vagabonds, &c. by stripping them naked from the Waist upwards, and flogging them 'till their Bodies are bloody, and then he must send him to the Place of his Birth; and if that is not known, then to the Place of his last Abode for one Year before Whipping; and if that is not known, then to the Town through which he pass'd last unpunish'd; and if it cannot be known where he was born or dwelt, then to the House of Correction, &c. to be employ'd in Work or in Service for a Year.

Rogues.

The Constable is to give him a Testimonial of the Day and Place of his Whipping. Constable not endeavouring to seize Rogues, or not punishing them, forfeits 10 s. Or such Constable who doth not receive a Rogue, who is to be convey'd from one Town to another 'till he comes to the Place of his Birth, &c. he forfeits 5 l. or if he receives him and doth not convey him to the next Constable, the like Penalty. Stat. 39 Eliz. c. 4.

Persons running away from their Families, and leaving a Charge to the Parish, are to be punished as incorrigible Rogues. 7 Ja. 1. c. 4.

Sabbath.

They are to levy the Penalty of 5 s. on Persons resorting to Wrestling, Dancing, or other Sports on a Sunday; and also of Persons doing any worldly Labour on that Day. Butchers killing Meat, &c. 1 Car. 1. c. 1. 3 Car. 1. c. 1. 29 Car. 2. c. 7.

Persons serving any Warrant, Process, &c. on a Sunday, (except in Cases of Treason, Felony, and Breach of the Peace) shall



Sabbath.

shall answer Damages as if they had done the same without Warrant, for false Imprisonment, and the Service shall be void.

29 Car. 2. c. 7.

Shoemakers.

By Warrant from two Justices Constables shall search after Boots, Shoes, and other Leather, purloin'd, imbezill'd, sold or pawn'd by Journeymen Shoemakers in London, and cause such Journeymen to be whipp'd, &c. 9 Geo. 1. c. 27.

Constables, Tithingmen, &c. are to quarter Soldiers in Inns, Ale-houses, Victualling-houses, &c. 1 Geo. 1. c. 27.

Soldiers.

If any High Constable, &c. shall receive or agree for any Money or Reward to excuse any Person from quartering of Soldiers; or if any Victualler shall refuse or receive any Soldiers, and be thereof convicted by the Oath of the Constable, &c. before one or more Justices; in either of these Cases, a Penalty not exceeding 5*l.* nor less than 40*s.* is incurr'd, leviabie by Distress and Sale, by Justice's Warrant, directed to any other Constable, &c. to the Use of the Poor.

Any one or more Justices may command any High Constable, or other Constable, &c. to give an Account in Writing of the Number of Officers or Soldiers billeted by them, and of the Names of the Persons on whom billeted, and their Signs, &c. 10 Geo. 1. c. 6.

Swearing.

Constables are to levy the Penalties for prophane Swearing, which is 1*s.* for a Servant, Labourer, &c. and 2*s.* for others, to the Use of the Poor, and double for the second Offence, and treble for the third, to be levied by Warrant of one Justice, &c. Stat. 6 & 7 W. & M. c. 11. if no Distress, Offender must be set in the Stocks.

Tithes.

By Warrant from two Justices, Constables, &c. are to levy the Money adjudg'd for refusing the Payment of small Tithes, by Distress and Sale in three Days. 10 & 11 W. 3. c. 15. 7 & 8 W. 3. c. 6. & 4 Ann.

**Constables.**

The Tithes are to be under 40*s.* per Ann. and Tithes due from *Quakers* under 10*l.* are thus recoverable. 1 Geo. cap. 7.

Tithes.

In *London*, the Sums of Money settled in Lieu of Tithes, by 22 & 23 Car. 2. c. 15. are to be paid Quarterly to the Parsons, &c. and upon Refusal, or Neglect to pay the same, and Demand made on the Premises, the Lord Mayor, on Oath of such Refusal or Neglect, may grant Warrants for the Collector, with the Assistance of a Constable in the Day-time, to levy the same by Distress and Sale of the Party's Goods, &c.

Constables are to apprehend Vagrants, and carry them before a Justice. Constables or Officers neglecting to apprehend them, is a Breach of Duty, and any other Inhabitants refusing to apprehend Vagrants, being charged by a Justice, forfeit 10*s.* to the Poor, to be levied by Distress.

As a Reward for Apprehension, a Justice of Peace may by his Warrant order the Constable, or other Officer where a Vagabond was found begging, to pay 2*s.* to the Person apprehending, and a Recompence for Trouble and Loss of Time besides.

Vagrants.

Constables are to make, general Privy Searches for Vagabonds, &c. before the Quarter-Sessions. He is to convey Vagrants by the Justice's Pass and Certificate, according to the Directions therein, and deliver them to the next Constables, &c. taking a Receipt.

If a Petty Constable shall counterfeit such Certificate, or alter any Sum, or not convey the Person therein intended to be convey'd, he shall forfeit 20*l.* above the Sum so fraudulently taken, one Moiety to the Poor, the other to the Informer, to be levied by a Warrant from any Justice of the County where the Offence was done.

A Justice may examine a Constable upon Oath, touching such Conveying

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and if he refuses to be sworn, or neglects his Duty in any thing, then he is to lose the Sum allow'd by the Certificate.

When a Petty Constable has convey'd the Vagrant to the Place order'd by the Pass, on his bringing to the Constable such Certificate as aforesaid, with the Receipt from the Officer to whom the Vagrant was deliver'd, the chief Constable shall pay such Petty Constable the Allowances ascertained in the Certificate, taking the said Certificate and his Receipt, which is to be allow'd the chief Constable by the Treasurer.

Vagrants.

Constables are to cause Beggars, &c. to be whipp'd, on Complaint of two Inhabitants.

Neglecting it to forfeit 10*s.* and failing in their Duties in other Respects, to forfeit 20*s.* 12 *Ann. c. 23. Sess. 2.*

Constables must cause Night-watches to be set from *Whitson-tide* 'till *Michaelmas*, from Sun-set to the Rising thereof, with four Men, or more, who must be able and Inhabitants of the Place, and watch by Turns; if they refuse, the Constable may complain to a Justice of Peace, who may bind the Party refusing to his Good Behaviour, and so over to the next Quarter-Sessions, &c. or he may present such Person for his Default at the Assises, or Sessions of the Peace.

Watches.

The Inhabitants are not compellable to watch at the Will of the Constable, but only when their Turn cometh, according to the Use and Custom of the Place.

A Constable appointed a Man to watch, and because he refused he put him in the Stocks: In an Action of false Imprisonment, the Defendant justified as Constable, but did not shew that the Plaintiff was an Inhabitant of the Town, and ill. *Cr. Eliz. 204.*

A Constable may imprison in the Stocks one who refuses to Watch and Ward. 3 *Leon. 208. Cr. El. 204.* But then he ought to have a Warrant from the Justice for it first. *Cr. El. 204.*



## Constables.

Where a Warrant is directed by a Justice of Peace to the Sheriffs, Bailiff or his Servant, or to the Constable, or other private Person to arrest one, such Person cannot command another to do it, neither by Word nor Writing, but must do it himself. *Co. 9. Rep. 69.*

If the Warrant is directed to the Constable by Name, commanding him to execute it, though he is not compellable to go out of his Parish, yet he may, if he will, and shall be justified by the Warrant in so doing; but if it is directed to all Constables generally, it shall be taken respectively, and in such Case a Constable cannot execute it out of his Precinct. *1 Salk. 106. Case of the Village of Chorby. Trin. 11 W. 3. B. R. Held so likewise in the Case of the King and Chandler. Hill. 11 W. 3.*

Warrants to  
execute.

It is at the Election of a Constable to carry a Person apprehended before any Justice, if the Warrant be not Special to bring the Offender before the Justice who granted it. *5 Rep. 59.* And a Justice of Peace his Warrant ought to specify the Cause of its being issued.

A Man may be bound to his Good Behaviour for any Abuse or Contempt to the Justice's Warrant, and may be indicted and fined for it.

If he is indicted for not executing a Warrant, you must shew some particular Act of Disobedience, and not generally that he did not execute it. *Trin. 20 Car. B. R.*

He may justify the Detaining an Offender for a Day, by the Command of a Justice of Peace, without a Warrant, not having an Opportunity just then to examine him. *Moor 408.*

If a Justice sends his Warrant to a Constable, to bring a Person before him to answer to such Matters as shall be objected against him, and doth not specify the Cause in his Warrant, for which he issued the same, this Warrant is unlawful, and the Officer is liable to an Action

Warrants to execute.

Action of false Imprisonment if he executes it; for all Warrants not specifying the Cause are utterly against Law. *Co. 4 Inst. Tit. De frangent. Prison.* Except for Treason, or Warrants from the Council, Secretaries of State, or Lord Chief Justice; these need not set forth the Cause for Reasons of State.

If a Constable be indicted for not executing a Warrant, you must shew some particular Act of Disobedience, and not generally that he did not execute it. *Trin.*

*20 Car. B. R.*

A Warrant from a High Constable to Petty Constables to make Presentments of Offences committed in their Precincts.

**B***y Virtue of a Warrant to me directed from, &c. four of his Majesty's Justices of the Peace for this County, These are to require you to make your Appearance at the next General Quarter-Sessions of the Peace, to be held at, &c. on, &c. for the County aforesaid, and then and there to carry with you, and produce in Writing, a Presentment, containing the Names, Professions, and Places of Abode, of all, or any Persons which have done or committed Treason, Murder, Felonies, Robberies, Thefts, Riots, Routs, made unlawful Assemblies, Assaults, Batteries, Bloodshed, Refractory, used deceitful Weights or Measures, Forestalling, Ingrossing, or Regrating, not pursuing Hue and Cries, keeping Ale-houses without License, keeping Bawdy-houses, being Drunkards, Swearers, Blasphemers, Prophaners of the Sabbath, Harbourers of Inmates, building Cottages contrary to Law, Incroachment upon Commons, Defaults in not repairing Highways and Bridges, and in cleansing of Ditches, and generally all Manner of Trespasses and Offences whatsoever, inquirable by you, and committed within your Parish and Precincts, to the End that Offenders may be punished according to Law. Dated, &c.*

## The Form of a Constable's Presentment.

The Presentment of *A. B.* Constable of, &c. in the County of, &c. made at the General Quarter-Sessions of the Peace, held for the said County, the Day of, &c. 1723.

**T**HE said *A. B.* says upon his Oath, That *C. D.* of the Parish of, &c. in the County of, &c. aforesaid, does at this Time, and has for the Space of one Month past, kept an unlawful Gaming-house in the said Parish of, &c. viz. He has permitted Servants, Apprentices, &c. to play at Cards, Dice, and other Games prohibited by Law, to the great Encouragement of Vice, and Disturbance of the Neighbourhood there.

The said *A. B.* likewise further presents upon his Oath, That *E. F.* of the said Parish of, &c. frequently carries out stinking Carcasses, and other Filth into the Highways, which is a common Nuisance to the Parish, and an Annoyance to Travellers.

The said *A. B.* also presents *G. H.* to be a common Disturber of the Peace.

### A Warrant from Justices to constitute another Constable on the Death of a former, or his Removal out of the Hundred.

Essex, ss. **W** Hereas we are credibly informed, That *A. B.* of, &c. who at the last Quarter-Sessions of the Peace held for this County, was elected and sworn High Constable of the Hundred of, &c. for the County aforesaid, is lately dead (or removed with his Family out of the said Hundred before the Time he ought to serve is expired) whereby the said Hundred of, &c. is at present destitute of a Constable to execute Warrants, and to keep the Peace: These are therefore in his Majesty's Name to command you (whom we think fit to serve in the said Office) personally to come and appear before us, or some of his Majesty's Justices of the Peace for the County aforesaid, to take the Oath of a Constable, and to serve his Majesty in that Office until the usual Time of electing new Officers. Given, &c.

A Warrant



## A Warrant to remove a Constable continuing in his Office above a Year.

Essex, ff. **W** Hereas it appeareth to us A. B. and 13 & 14 Car. C. D. two of his Majesty's Justices of 2. cap. 12. the Peace of the County aforesaid, that R. K. hath lately executed the Office of a Headborough, in and for the Parish of L. aforesaid, during the Space of one whole Year, and doth still continue to execute the said Office after the Expiration of the said Year, contrary to the Form of the Statute in that Case made and provided: Now we do hereby, according to the Power and Authority given unto us concerning the Premises, discharge you the said R. K. from the Office of Constable in and for the said Parish of L. requiring you from henceforth to forbear the Execution thereof in any Matter or Thing whatsoever, until further Order shall be taken therein. Given, &c. Two Justices.

By the Statute of 3 Jac. c. 10. an Offender who is to be carried to Gaol, must bear his own Charges, and of those who convey him; if he refuse, then the Constable, by Warrant from one Justice, may sell his Goods, &c.

## A Warrant to levy upon the Offender's Goods the Charges of carrying him to Gaol.

Essex, ff. **W** Hereas it appeareth to me, upon the Complaint of — the Parishioners of M. in the County aforesaid, that the Charges of J. L. and of those who conveyed him to Gaol, being sent thither by my Warrant upon Suspicion of Felony, did amount to 15s. and that the said J. L. hath Goods and Chattles within your Township, sufficient to defray the said Expence: These are therefore in his Majesty's Name to command you to levy the said Sum of 15s. by Distress and Sale of the Goods of the said J. L. within your Parish, causing the same before the Sale thereof, to be appraised by some of the Neighbours there, viz. where he was taken, and that you pay the said Sum unto the Parishioners of L. in the said County; and hereof fail not, &c. 3 Jac. c. 10. One Justice.

If the Offender hath no Goods, &c. then the Constable and Church-wardens, and three of the Inhabitants; and if there are no such Officers, then four of the principal Inhabitants may tax all the rest, which Tax must be allowed by one Justice; and if they refuse, then by a Warrant from one Justice the Officer may levy it.

A War-

## A Warrant to levy a Tax on Parishioners for defraying such Charges where the Offender hath no Goods.

3 Jac. 1. c. 10.  
One Justice.

**W** Hereas C. W. by Virtue of my Warrant bearing Date, &c. was conveyed to the Gaol of, &c. for committing Felony, by C. D. Constable of, &c. and G. E. and M. N. of, &c. aforesaid, the Charges and Expenses whereof amounted to 20s. and the said C. W. having no Goods or Chattels to defray the said Expence, a Tax upon the Inhabitants of the said Parish of, &c. hath been made according to Law, for paying and satisfying the same: And whereas the several Persons mentioned in the said Taxation, or Assessment (whose Names and the Charges upon them are under-written) have refused to pay the respective Sums on them taxed, for the Purpose aforesaid, contrary to the Act of Parliament in that Case made: These are therefore to require you, or either of you, to levy the said several Sums herein after-mentioned, upon the Goods and Chattels of the respective Persons so taxed as aforesaid, which shall refuse to pay the same, returning to them the Overplus. Given, &c.

### The Form of the Rate or Tax.

**A** Rate or Tax made by us, whose Names are hereunto subscribed, the Thirtieth Day of June, 1701. being the Constables, Church-wardens, and three other Inhabitants of the Parish of L. in the County of E. where J. L. was lately taken and conveyed to the common Gaol of the said County, upon Suspicion of Felony, which said Tax is made by us, and charged upon the Inhabitants of the said Parish to defray the Charges for carrying the said J. L. to Gaol, having no Goods to satisfy the same.

|                       | l. | s. | d. |
|-----------------------|----|----|----|
| Imprimis, A. B. _____ | 0  | 1  | 0  |
| C. D. _____           | 0  | 0  | 9  |
| E. F. _____           | 0  | 2  | 0  |
| G. H. _____           | 0  | 1  | 3  |

**I** A. B. Esq; one of his Majesty's Justices of the Peace of the County of Essex, do allow the Tax above-written. Witness my Hand this 30th Day of June, 1702.

R. W. Constable  
A. B. } Church-  
C. D. } Wardens.  
E. F. } Inhabitants  
G. H. } of H—  
J. K. }

If they refuse to pay the several Sums at which they are taxed, then levy it by this Warrant, &c.

A Warrant to levy the Tax upon those that refuse to pay, &c.

Sheweth, *ff.* **W** Hereas the Persons whose Names are under-written, have been lawfully taxed 3 Jac. 1. c. 10.  
One Justice.  
the several Sums herein after-mentioned, and which are added to their respective Names, in order to satisfy the Charges expended by A. B. and those whom he called to his Assistance, to carry J. L. to Gaol, which said Persons have refused to pay the same, contrary to the Form of the Statute in that Case made and provided: These are therefore to require you, or either of you, to levy the said Sums upon the several Goods and Chattels of the respective Persons so tax'd, as aforesaid, and refusing to pay the same, returning the Surplus to them respectively. Given, &c.

|           | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|-----------|-----------|-----------|-----------|
| A. B. ——— | 0         | 1         | 0         |
| C. D. ——— | 0         | 0         | 9         |
| E. F. ——— | 0         | 2         | 0         |
| G. H. ——— | 0         | 1         | 3         |

By this Statute the Constable, and other Inhabitants of 13 & 14 Car. 2. c. 12.  
the Parish, may tax all Persons chargeable by the 43 Eliz.

2. to reimburse their Charges for conveying Vagabonds, &c. to the House of Correction, and for other Parish Charges.

The Persons to be tax'd by the Act are every Inhabitant of the Parish, the Parson, or the Vicar, and every Occupier of Houses, Lands, Tithes, and Woods, but the Landlord is not to be taxed in Respect of his Rent.

Now the Tax upon Land is to be made according to the yearly Rent, but no Man is to be tax'd for the Stock he hath upon the Lands; but if a Clothier, or Merchant, having a considerable Stock in Trade or Merchandise, and occupy Lands, they may be tax'd for both.

The Taxation of Personal Estates must be in the Parish to which it is tax'd, and after the Rate of 5 *l.* for every 100 *l.*

This Tax or Rate must be confirm'd under the Hands and Seals of two Justices of the Peace; and then if the Person



## Constables.

Person taxed refuse to pay, the Constable, by Warrant from the Justices, may levy it.

First, if the Inhabitants refuse to make a Tax, two Justices may make a Warrant, requiring them to do it: the Form of which Warrant may be thus :

### A Warrant to compel Parishioners to make a Tax.

Essex, ss. **W** Hereas A. B. of, &c. Constable, hath this Day been before us, and made Complaint that he hath expended the Sum of 20s. in the conveying of &c. a Felon to Gaol, by Virtue of a Warrant from, &c. one of His Majesty's Justices of the Peace for this County and the said A. B. having requested the Church-wardens, and several Inhabitants of the said Parish of, &c. to make a Rate or Tax on all the Inhabitants of the said Parish, for the reimbursing and discharging of his Charges and Expences in conveying the said &c. to Gaol, according to the Direction of the Act of Parliament in that Case made, they have refused to make the said Rate, whereby the said A. B. is in Danger of losing the said 20s. by him expended as aforesaid: Therefore we are therefore in His Majesty's Name to require you, the greater Number of you, who shall meet together upon Notice of this Precept, to examine the Accounts of the said A. B. And if you shall find his said Account to be true and the Expences necessary, then you do forthwith tax every Inhabitant within the Parish, in several and proportionable Sums, in the whole amounting to the said Sum of 20s. And we do also hereby empower the said Constable to demand and receive the respective Sums so assessed; and if any Person so taxed refuse to pay the same, that then the said Constable do levy the same by Distress and Sale of the Goods of the Person so refusing. Given, &c.

The Names of the Persons refusing to pay the Tax being return'd by the Constable to the Justices of Peace, then they may issue forth a Warrant to appear and shew Cause why they refuse to pay.

If they appear, then two Justices may bind them over to appear at the Sessions, if they think fit to do.

When they appear at the Sessions, they may be presented and indicted there, setting forth, That the Assessment was reasonable, and it must appear to be for a Constable's Rate, and conclude, *contra formam Statuti*.

If they refuse to appear upon Notice, then the Justices may issue forth a Warrant to appear.

If they appear before the Justices, and they do not think it expedient to bind them over to the Sessions, then they may grant

## A Warrant to distrain, &c. for the Charges as followeth.

*Flex, ff.* **W** Hereas it appeareth unto us upon the Complaint of G. C. late Constable of the said Parish, That B. D. and C. P. Inhabitants of the aforesaid Parish, have refused to pay the Sums herein after-written, that is to say, the said B. D. hath refused to pay 2s. and the said C. P. 2s. 6d. being severally assessed upon them towards the reimbursing such Charges which the said G. C. hath necessarily expended in the Execution of his said Office: these are therefore to require you to levy the said respective Sums so assessed upon the said Persons, by Distress and Sale of their respective Goods, rendring to them the Overplus, if any shall be. Given, &c.

The Inhabitants of *Derby* were indicted for refusing to meet and make a Rate upon the several Parishes of *Derby* to pay the Constables Tax: 'Twas objected, that the Statute only says they may; *sed non allocatur*; it may in the Case of a Publick Officer is tantamount to *shall*. *Skinner* 370. The King against the Inhabitants of *Derby*.

If the Constable doth not cause Rogues and Vagabonds to be whipp'd, then the Justice may send a Warrant to levy the Penalty of 10s. for every Default.

The Confession of the Party, or Proof by two Witnesses, before two Justices, is a Conviction. The ten Shillings must go to the Poor of the Parish, or to the Maintenance of the House of Corrections, as the Justices of the Peace shall think fit.

## A Warrant to make a privy Search.

*Flex, ff.* **T** Hese are to authorize and require you to call to your Assistance some sufficient Men of your Neighbourhood, and that in one Night before the 12th Day of this Instant May, you make a privy Search in all suspicious Places within your Precinct, to find out and apprehend

12 Ann. c. 23.  
Sett. 2.

## Constables.

*apprehend Rogues, Vagabonds, and other suspicious Persons there; and that you cause such as you shall so find, to be brought before us C. B. and F. G. two of his Majesty's Justices of the Peace for the said County, at the House of J. G. in L. in the County aforesaid, on Thursday the 10th of May aforesaid, to be examined and punished as we shall see Cause, and that you appear there likewise to give an Account touching the Premises. Given, &c.*

The Justices must meet twice a Year to execute this Statute, and the Warrant above-written must be sent to the Constable five Days before their Meeting; and if the Constable shall not appear at that Meeting, or not give an Account upon Oath (when he doth appear) what Rogues he hath taken; or if he doth not convey to the House of Correction such of them as the Justices of Peace shall commit, he may be fined any Sum under 40s.

### A Warrant from a High Constable to Petty Constables, to make a private Search.

**B***Y* *Virtue of a Warrant to me directed from P. B. and S. C. Esqs; two of His Majesty's Justices of the Peace for the County of, &c. aforesaid: These are to command you to make diligent Search and Enquiry within your Precincts, upon, &c. next, in the Night-time, after all Rogues, Vagabonds, and sturdy Beggars, and all such Persons as are suspected to keep Bawdy-houses, and the Frequenters thereof; and also after all Disturbers of the Peace, and to apprehend and bring them before us at, &c. upon, &c. next, by ten of the Clock in the Forenoon, to be dealt with according to Law. Hereof fail not. Dated, &c.*

### Warrant to the High Constable to apprehend the Petty Constable for Breach of the Peace.

Berks, *Jf.* **W***Hereas Complaint hath been made before me by R. E. of D. in the said County of Berks, Gent. That W. W. of D. aforesaid, Taylor, Constable of the said Parish, hath committed a notorious Breach of the Peace on the Person of the said R. E. by beating and abusing him when he had him in his Custody, on the 5th of the*



instant November, and was then also guilty of profane Swearing and Cursing: These are therefore in his Majesty's Name to require and authorize you, and either of you, to apprehend the said W. W. and bring him before me, or some other of his Majesty's Justices of the Peace to be examined concerning the Premises, and to be farther dealt with according to Law. Given under my Hand and Seal this 6th Day of November, 1731.

## Indictments against Constables.

### For an Escape.

Ex. ff. **T**HE Jurors, &c. do present, That whereas one A. B. late of K. in the County of S. Husbandman, was Taken and Arrested for stealing the Horse of R. B. and afterwards, that is to say, on the 30th Day of April in the Eighth Year of the Reign of our said Sovereign Lord the King, by J. S. Esq; one of the Justices of our said Sovereign Lord the King assigned to keep the Peace in the said County, was Committed in Custody of R. G. then Constable of the Vill of K. aforesaid, to be carried to the Gaol in the County aforesaid, and that the said R. G. then and there had the said A. B. in his Custody for the Felony aforesaid, and afterwards on the said 30th Day of April in the Year aforesaid, at L. aforesaid in the County of S. voluntarily and feloniously permitted the said A. B. to go at large from the Custody of him the said R. G. against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

### For refusing to execute a Justice's Warrant.

Ex. ff. **T**HE Jurors, &c. do present, That whereas R. B. Esq; one of the Justices of our said Sovereign Lord the King assigned to keep the Peace in the County of S. by his Precept signed and sealed with his own Hand and Seal, dated the 1st Day of July in the Year aforesaid, directed to all and singular the Constables and other Officers of our said Sovereign Lord the King, of the County of S. Commanded the said Constables and Officers,

cers, and every of them, that they, or one of them, should take J. O. [here recite the Warrant, which if it be to find Sureties, &c.] to find Sureties of the Peace toward our said Sovereign Lord the King and all his People, and especially towards R. N. which said Precept afterwards, that is to say, on such a Day and Year, at H. in the County aforesaid, was delivered to J. O. then Constable of H. aforesaid, to be executed in due Form of Law: Nevertheless, the said J. O. not regarding the Duty of his Office in this particular, from the first Day of June in the Year aforesaid to the Day of taking this Inquisition, at the Parish aforesaid in the County aforesaid, behaved himself remissly and negligently in the Execution of his Office concerning the Premises, and during the Time aforesaid totally neglected and contemptuously refused to Execute the said Precept, against the Duty of his Office in this particular, in Contempt of our said Sovereign Lord the King and his Laws, to the great Delay of Justice, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

N. B. The Indictment must set forth the Nature and Tenour of the Warrant, or else 'tis not good.  
1 Vent. 325.

### For not raising a Hue and Cry.

**T**HE Jurors, &c. do present, That at such a Day and Year, at H. in the County of S. certain Malefactors unknown, with Force and Arms, made an Assault upon one R. N. Yeoman, and feloniously took and carried away five Pounds in Current Monies of the said R. N. whereupon the said R. N. immediately on the same Day and Year aforesaid, came to the Vill of B. in the said County, and then and there gave Notice to one J. O. Constable of the Vill of B. aforesaid then being, that the said Malefactors had committed the said Felony in the Manner and Form aforesaid, and then and there requested the said J. O. recently to levy Hue and Cry against the said Malefactors and that he should give in Command to the Inhabitants of the Vill of B. aforesaid, to prosecute such Hue and Cry as Right and by the Law of the Land they ought to do: Nevertheless, the said J. O. having no regard to the due Execution of his Office in this particular, did not Levy such Hue and Cry, nor Command the Inhabitants aforesaid, nor any of them recently to prosecute such Hue and Cry, but then and there totally refused so to do, to the ill Example of others Subjects of

*said Sovereign Lord the King, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Statute in such Case made and provided.*

Against those who refuse to follow the Hue and Cry, being commanded by the Constable.

**T**HE Jurors, &c. do present, [as in the former Precedent to the Word *Malefactors*, then write thus] And thereupon the said J. O. on the Day and Year aforesaid, at B. aforesaid, levied Hue and Cry against the said Malefactors as of right he ought, and then and there commanded and appointed T. P. of B. aforesaid, Yeoman, and G. E. of the same Place, Husbandman, to follow Hue and Cry aforesaid; nevertheless the said T. P. and G. E. then and there altogether refused and neglected to follow Hue and Cry aforesaid, in Contempt of our said Sovereign Lord the King, and against his Peace, Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Against those who refuse to assist him to apprehend a Felon.

*Assess, ff.* **T**HE Jurors, &c. do present, That J. S. of H. in the said County, Labourer [on such Day and Year] at H. aforesaid, in the said County, feloniously took and carried away one Cow of the Goods and Chattels of one G. E. and that J. O. then Constable of the Vill of H. aforesaid, on (such a Day and Year) at H. aforesaid, commanded and requested T. P. of H. aforesaid, and G. H. of the same Place, Yeoman, to assist him the said J. O. then being Constable of H. aforesaid, to arrest and take the said J. S. for the Felony aforesaid; nevertheless, the said T. P. and G. E. and each of them, on the Day and Year aforesaid, at H. aforesaid, altogether refused to do so, in Contempt of our Sovereign Lord the King, and against his Peace, Crown and Dignity, &c.

The like may be for refusing to assist a Constable to convey Prisoners to the Gaol, or to bring them before a Justice of the Peace, &c.



## Convicts.

Persons convicted escaping, to be recommitted for 4 Years without Bail.

**P**ersons convicted, having the Benefit of Clergy, and being committed to the House of Correction, for not less than six Months, nor more than two Years, by two Justices, and escaping out of Prison, and being retaken, shall be recommitted, and kept to hard Labour, for not less than twelve Months, nor more than four Years, without Bail or Mainprize. 5 *Ann. c. 8.*

## Corn. Vid. Transportation.

Corn not to be transported.

**N**O Person shall transport Corn, Victuals, or Wood, without License, unless when sold at such Prices as are expressed in the Act. Justices at Quarter-Sessions to hear and determine Offences. 1 & 2 *P. & M. c. 3.* 1 *Ja. 1. c. 25.* 3 *Ja. 1. c. 11.*

See the Power of Justices at their Quarter-Sessions next after *Michaelmas* and *Easter*, and in *London* in *October* and *April*, by the Mayor Aldermen, and Justices there concerning foreign Corn imported. 1 *Ja. 2. c. 19.*

Bounty Money given for transporting Corn.

See 1 *W. & M. c. 12.* for encouraging the Exportation of Corn, when at such Prices as in the Act expressed.

Bounty Money taken away, &c.

By Statute 11 *W. 3. c. 1.* the Bounty Money allowed upon the Exportation of Corn, by the Act of 1 *W. & M. c. 12.* is taken away after the 29th of *February* 1699, till the 29th of *September*, 1700.

## Coroner.

Coroners, how to be chosen.

**B**Y 14 *Edw. 3. c. 8.* A Coroner shall have Sufficiency in the County whereof to answer all People.

By 28 *Edw. 3. c. 6.* Coroners shall be chosen in full Counties, of the most convenient and lawful Men, giving to the King and other Lords (who may make Coroners) their *Franchises*.

By Virtue of a Writ *de Coronatore Eligendo*, directed to the Sheriff, he is to be chosen by the Freeholders of the County; and the Sheriff, after the Day of Election, is to certify it, and the Name of the Person chosen, &c. *F. N. B.* 163. He is likewise to administer the Oath of Office to him. The Number of Coroners in Counties is uncertain, but in most Counties there are usually four Coroners.

And as a Coroner is chose by the Writ *de Coronatore Eligendo*; so by the Writ *de Coronatore Exonerando*; a Coroner may be discharged for Negligence or Insufficiency in the Discharge of his Duty.

And because he is elected by the Freeholders, his Office is not determined by the Demise of the King. *1 Levinz* 120.

He is to enquire *super visum Corporis* how the Person was killed, and by whom, and what Goods and Chattels he had at the Time of the Fact committed.

He is to enquire *super visum corporis*.

If the Body cannot be found, then he has no Authority; but in such Cases the Matter may be presented to the Justices in their Quarter-Sessions, and there found by the Jury; and this will entitle the King to a Forfeiture of the Goods. *1 Roll. Rep.* 217. *Noy* 87. *Poph.* 209. But this is traversable. *2 Levinz* 141.

He must take the Depositions of Witnesses in Writing; attested under their Hands, and may bind them over to the next Gaol-Delivery to give Evidence, &c.

Must take Depositions in Writing.

If the Jury by him impanell'd is sworn, and the Witnesses not ready, he may then adjourn them, and bind them by Recognizance to appear again.

May adjourn the Jury.

When he hath Notice given to view the Body, he must make a Precept directed to the Constable where it lieth, to summon twenty-four Men (who are to be of the Jury) to appear before him at a certain Day and Place, to execute such Things as shall be given to them in Charge.

Must make his Precept to the Constable to summon a Jury, &c.

If the Body is buried before he comes, the Vill must be amerced, and he may dig it up again; the Vill may also be amerced for neglecting to send for him till the Body is putrified.

Vill amerced.

An Information was brought by the Master of the Crown-Office, against the Debtor of a *Felo de se*, the Money being by that means forfeited to the King: If the Substance of the Inquisition be not set forth in the Information, 'tis void. *2 Saund.* 27.

He may cause the dead Body to be digged up again, soon after 'tis buried, but not at a great Distance of Time, tho' it was so done in one *Barkley's* Case, but not without Leave of the Court. *Sid.* 101.

Coroner may order dead to be digg'd up.

## Coroner.

He may find any Nufance which occasion'd the Death of a Man, as that a Bridge is in Decay, and by Reason of a Breach, the Person fell in and was drowned, and the Town shall be amerced. *Allen* 52.

Coroner cannot make a Deputy.

He is a Judicial Officer; and therefore cannot make a Deputy; besides, by the Statute call'd *Officium Coronatoris*, 3 *Edw.* 1. he is obliged *statim accedere ad occisum*, so that he ought to see the dead Body, and an Inquisition otherwise taken is void. *Staunford's Pl. Coron.* 51.

May take 13s. 4d. Fee.

By Statute of 3 *Hen.* 7. he is impower'd, upon View of the Body, to take 13s. 4d. of the Slayer; if he has none, and is fled, then he may amerce the Town for suffering the Criminal to escape, and take that Fee out of the Armerciament; but he cannot demand any Fee upon the View of a Person kill'd by Misfortune, on Pain to forfeit 40s. 1 *H.* 8. c. 7.

1 *H.* 8. c. 7.  
2 *Inst.* 176.

Coroner fined for Neglect of Duty.

If he does not come, having Notice of the Death of any Person, he may be fined and imprisoned by the Justices; as also for not binding over Witnesses to the next Gaol-Delivery; for not certifying his Recognisances, and the Evidence, and the Inquisition taken before him.

On Information for *Felo de se*, Coroner must see forth the Inquisition. 1 *Saund.* 275. 2 *Saund.* 27.

He is to take an Inquisition upon Flight of the Felo to intitle the King to a Forfeiture. 5 *Rep.* 109. B.

But this must be within his proper Jurisdiction in the County; for if any Body be kill'd within the Verge of the King's House, or Court, the Coroner thereof hath an exempt Power. 4 *Rep.* 45.

B. R. may set aside his Inquisition.

If there is any Practice with him, to suppress the Evidence for the King, B. R. may set aside the Inquisition upon a *Male se gessit*; and if he omit or neglect to inquire, B. R. as supreme Coroner may do it, or appoint Commissioners, but then it must be *super visum Corporis* if done by Commissioners. 1 *Vent.* 182. 1 *Salk.* 190.

Melius Inquirendum never granted 'till after Inquisition qualth'd.

A *Melius Inquirendum* is never granted after an Inquisition *super visum Corporis* is filed, unless it be qualified upon Oath made of a Misdemeanour in the Coroner's Jury; as that they did not go according to their Evidence, &c. 1 *Mod.* 82. 3 *Mod.* 80, 258.

And in some Cases it may go to the Sheriff, as if the Coroner *super visum Corporis* find that the Man fell into a Pit, &c. Yet there may go a *Melius Inquirendum* to the Sheriff, to inquire of the Death, &c. and what Goods and Chattels he had at that Time.

By the Statute 4 *Edw.* 1. the Inquisition should be taken *super Sacramentum*, &c. *Hominum villarum proximi* &c. but it was *super Sacramentum*, &c. *proborum* & *legitimum* &c.



*terminum de parochia, &c.* yet it was held good. *Sid.* 204. *Latch* 166.

Matters of Form may be amended, as *seipsum felonice submersus fuit*, it should be, *jecit seipsum in Aquam &c.* *ibid. seipsum merfit.* *Sid.* 259. 1 *Vent.* 182, 352. *Cro.* *Fl.* 371. *Sid.* 204, 259. *Latch* 166. Matters of Form may be mended.

If he return *fugam fecit*, it is not traversable; but if he find the Person *Felo de se*, it may be traversed. 2 *Lev.* 152. 2 *Vent.* 178, 353.

He is a Ministerial as well as a Judicial Officer, and therefore where an Exception is to the Sheriff, or any Default is in him, the Coroner shall return the Process; as a Writ of Covenant, in a Fine, a *Venire facias*, &c. He is a Ministerial as well as a Judicial Officer.

But then, if the original Process is directed to him, all other Process in the same Suit must be so likewise, tho' another and more indifferent Sheriff be appointed while that Suit is depending.

And if such Process is return'd *Coronatoribus*, it hath been held two may return it, tho' there are more in the County, but one cannot; for in this Case they are but as one Officer; and therefore if one arrests a Debtor, and he escapes, the Action shall be brought against both. 3 *Lev.* 399.

Where Coroners are authorised to act ministerially, their Acts are void, if they do not all join. *Hob. Rep.* 70. 2 *Harwk. P. C.* 52. And an Outlawry may be reversed, if the Name of the Coroner is not put to the Judgment. 1 *Roll. Rep.* 266.

Justices of Assize, and Justices of the Peace, may inquire of, and determine Defaults and Extortions of Coroners. Justice of Assize may inquire of Defaults of Coroners.

What Qualifications a Coroner ought to have. 2 *Inst.* 174, 175, 176.

A Coroner in one County is a Coroner in every County of England. *Godb.* 64.

If a Man drown himself, and cannot be found, the Inquisition is to be found before a Justice of Peace, and not a Coroner. *Pep.* 208. *Latch* 166.

If a Man voluntarily murder or kill himself by any Means or Way, he is a *Felo de se*, and all his Goods and Chattels, and Debts due upon Specialties, are forfeited to the King, but not till his Death is found by the Coroner; but he does not forfeit his Lands, neither shall his Blood be corrupt. *Dalt.* 341. Where one is *Felo de se*.

A. discharges a Musket with a felonious Intent at J. S. and misses him, and it breaks and kills him that fired it, he is a *Felo de se*. *Dalt.* 104.

Infant, &c.  
forfeit nothing.

If an Infant, or a *Non compos mentis* kill himself, he forfeits nothing; and so a Lunatick, if the Blow, &c. (which was the Cause of his Death) be given in Time of his Lunacy, though he die thereof when he is of sound Memory. *Staundf.* 19.

If the Body of the *Felo de se* be hid, so that the Coroner cannot find him, to inquire of the Death *super visum Corporis*, then the Justices of Peace may inquire of the Felony, and a Presentment thereof made before them, intitles the King to the Goods, &c. *Hale's P. C.* 29.

Lord Mayor is  
Coroner in  
London.

The Lord Mayor of London is Coroner there. *1 Cro.* 531.

The Chief Justice of the *K. B.* is sovereign Coroner for all England. *4 Co.* 57.

One Person may be Coroner of the King's House within the Verge, and of the County too. *4 Co.* 46. *b.*

The Coroner is to have *visum Corporis* of a Prisoner dying in Gaol by Reason of the Gaoler's ill Usage. *3 Inst.* 91.

The Inquest before the Coroner is to be of Persons within the four next adjacent Villis, made by the Bailiffs or Constables, and no Challenge to any of such Inquest. *1 Cro.* 135.

The Power of Coroners extends not to Offences committed on the Sea, or between high and low Water-mark when the Tide is in, though in Arms and Creeks of the Sea they have Jurisdiction. *3 Inst.* 134. A Coroner *super visum Corporis*, it is said cannot make Inquisition of an Accessary after the Murder, but he may of Accessaries before the Fact. *Moor Rep.* 29.

How a Coroner may be removed.

A Coroner may be remov'd for being *minus idoneus*. *5 Co.* 58. *b.*

Coroners not doing their Duty shall be fined and imprison'd for a Year, or three Years if he cannot pay the Fine, by *3 Eliz.*

Coroners  
ought to certify to Gaol-Delivery, and not Sessions.

Coroners ought to certify their Inquisitions at the General Gaol-Delivery, and not at the Sessions. *1 & 2 P. & M.* 13 *Lamb.* 365.

Coroners being Parties to the Exigents and Judges of the Outlawry, ought to be present at the Sessions.

No Traverse to an Indictment before the Coroner *super visum Corporis*. *3 Inst.* 55.

Coroners may be convicted of Offences against the Statute of *1 Hen.* 8. *c.* 7. by Examination of Witnesses, and touching Extortion, or not executing their Offices before a Justice of Peace. *Cro.* 130. *b.* *Lamb.* 434.

## An Inquisition for Murder on a View of the Body.

Essex, ss. **A**N Inquisition indented taken at L. in the said County, before me P. G. one of the Coroners of our Sovereign Lord the King, for the County aforesaid, on Friday the Twentieth Day of April, in the Eighth Year of the Reign of our Sovereign Lord the King, upon a View of the Body of C. B. feloniously kill'd at L. aforesaid, then and there lying dead upon the Oath of honest and lawful Men of the Vill of L. aforesaid, and of three other of the next Vills, (to wit) Bascomb, Ringmere and Malling, after the Manner of Inquiring how and by what Means the said C. B. came by his Death, that is to say, upon the Oath of (the Jury) who declare upon their Oath, that the said C. B. (on such a Day and Year) about One of the Clock in the Afternoon of the Friday aforesaid, was in the Peace of GOD, and of our said Sovereign Lord the King, at L. aforesaid, and then and there P. S. late of L. aforesaid, came and feloniously, and as a Felon of our said Sovereign Lord the King, and out of his premeditated Malice (on such a Day and Year) at L. aforesaid, in the County aforesaid, made an Assault upon the said C. B. and then and there, with a Sword in his Right Hand, smote and stabbed the said C. B. in the Right Side of his Breast, and gave the said C. B. a mortal Wound, of which Wound the said C. B. then and there instantly died, and thus the said P. S. then and there feloniously kill'd and murder'd the said C. B. against the Peace of our said Sovereign Lord the King, his Crown and Dignity. And further the said Jurors do declare upon their said Oath, that T. F. of N. aforesaid, C. T. of such a Place, &c. at the Time of the Felony and Murder aforesaid, committed in the Manner aforesaid (to wit) on Friday the said Twentieth Day of April, in the Year aforesaid, at L. aforesaid, in the County aforesaid, about One of the Clock in the Afternoon of the same Day, were feloniously present with drawn Swords, and then and there aiding, assisting and maintaining the said P. S. to do and commit the Felony and Murder aforesaid, done in the Manner aforesaid, against the Peace of our said Sovereign Lord the King, his Crown and Dignity. And further the said Jurors do declare upon their Oath, that the said T. F. of N. and C. T. of such a Place have not, nor hath either of



## Coroner. Costs.

them, any Goods or Chattels, Lands or Tenements, to their Knowledge, in the said County, at the Time of committing the Felony and Murder aforesaid. In Witness whereof, &c.

If by drowning, say,

3 Lev. 141.  
3 Mod. 103.

HE voluntarily and feloniously drown'd himself in a certain River there call'd B.

For one *Non compos mentis* drowning himself.

Essex, ff. **A**N Inquisition, &c. who declare upon their Oath aforesaid, that C. S. on the Day and Year aforesaid, and long before, that is to say, from the First Day of June, in the Year, &c. to the Day aforesaid, being a Lunatick, and not of a composed Mind, came alone to a certain Bridge call'd B. and then and there voluntarily and feloniously threw himself into the Water and drowned himself, &c.

Upon one who died in Prison.

Middlesex, ff. **A**N Inquisition, &c. who declare upon their Oath, that the said A. C. who was before committed to Gaol by C. B. Baronet, for the Suspicion of a certain Felony committed by the said A. C. on the Day and Year aforesaid, died a Natural Death by the Visitation of GOD, and thus the said Jurors do upon their said Oath declare, that the said A. B. came by his Death in the Manner aforesaid, and not otherwise. In Witness whereof, &c.

## Costs.

8 & 9 W. 3.  
c. 30.

**P**ersons order'd to pay Costs dwelling out of the Jurisdiction of the Court which gave the Costs, upon Request, and producing a true Copy of the Order for Costs, by Oath of one Witness, shall be made to pay such

Each Costs by one Justice of the County where the said Person dwells; on Refusal, Distress and Sale; for want, to be committed for twenty Days.

## Cottages and Inmates.

A Cottage is a House erected since the Statute, not having four Acres of Land in Fee-simple, or in Tail laid to it, and near it, and which is usually occupied with it.

Persons erecting a Cottage without four Acres of Freehold near it, and to be constantly occupied therewith, forfeit 10*l.* to the King, for continuing it, 40*s.* to the King for every Month. Owner or Occupier of a Cottage, suffering any more Families than one to dwell there, forfeits 10*s.* a Month to the Lord of the Leet. Lords of Leets, and their Stewards, shall inquire, and Presentments take by Oath of the Jurors, of Offences against this Act, and may levy the Forfeitures by Distress. Justices at Quarter-Sessions may also hear and determine Offences. This Act extends not to Cottages in Cities, &c. or for Labourers in Mines within a Mile of the Sea, or for Sea-faring Men within a Mile of the Sea, or Navigable River, or for Keepers of Warrens, Shepherds or Herdsmen, or an impotent Person, or to Cottages decreed to continue for Habitation, by Order of Justices of Assize, or Sessions. 31 *Eliz. c. 7.*

The Penalty of erecting a Cottage without four Acres of Land to it.

If a Cottage was built before the Statute of 31 *El. c. 7.* and afterward converted into two Dwelling-houses without four Acres of Land, both are Cottages.

If a new House is built since the Statute, upon an old Foundation before, it is a Cottage.

If the Land is sold from the House, or that from the Land, it is a Cottage.

But if a new House be built upon an old Foundation before the Statute, it is no Cottage.

Whether a Cottage hath four Acres, or not; or whether it is in City or Borough, there must be no Inmates under Penalty of 10*s.* *per* Month, which the Owner or Occupier of the Cottage must pay to the Lord of the Leet.

It must be presented by the Jury upon their own Knowledge, or an Indictment may be found by them. In either of these Cases the Lord hath a Title, or may distrain, so as to bring an Action of Debt for the Forfeiture,

## Cottages and Inmates.

How the Indictment must conclude.

feiture, or to levy it by a *Fieri facias*, directed by his Steward to the Bailiff of the Manor. *Co. Ent.* 666.

The Indictment for erecting of a Cottage must conclude *contra formam Statuti*, and likewise *contra pacem*, or otherwise may be quash'd. If it be for erecting *unum Messuagium pro habitatione*, and not laying four Acres of Land, it is good, though he doth not say it is inhabited. *Roll's Abr.* 2. p. 80. 2 *Roll's Rep.* 38. *Sid.* 359. 1 *Mod.* 295. 1 *Vent.* 107. for Building is not an Offence, as in 2 *Bulst.* 264. But it must be shewed, That the Building was *pro habitatione*, these being the very Words which create the Offence. 1 *Vent.* 107. *Godb.* 383.

The Indictment was *per Juratores presentatum existit*, that the Defendant had erected a Cottage, *Et alterius presentant quod continuavit, &c. contra formam Statuti*, after a Verdict it was reversed by Writ of Error, because there was no *Nominative Case* to agree with the Verb *presentant*; for the continuing the Cottage is a new Indictment, distinct from the first, and therefore *Juratores* in that Case shall not relate to this. *Mich.* 6 *W. & M.* *B. R.* *Mod. Rep.* 4. p. 315, 345. *Rex & Regina ver. Tarbridge, Godb.* 308. *Style* 33.

Cannot be a joint Indictment against several for having Inmates.

There cannot be a joint Indictment against several, it must be several against every Person who suffers Inmates in their Houses. 2 *Roll's Rep.* 164.

A Cottage may be erected on the Waste at the Charge of the Parish, for poor impotent Persons, by the Churchwardens and Overseers of the Poor, or the major Part of them, having obtain'd Leave of the Lord of the Manor in Writing under Hand and Seal; but then this must be confirm'd by the Justices in Sessions. And if the Lord of the Manor will not give Leave, the Sessions alone may tolerate a Cottage for a particular Time.

### The Lord's Consent to the Erecting of a Cottage.

**U**PON the Petition of A. B. and the Certificate of the Inhabitants of the Parish of, &c. I do hereby give my Consent, being Lord of the Manor of, &c. aforesaid That the said A. B. shall and may erect and set up a Cottage for his Habitation in some convenient Place on the Waste within the Parish aforesaid, to be assigned by my Steward, provided that an Order of Sessions be procured according to Law, for Confirmation thereof. Witness my Hand, &c.

A Petition



A Petition to Justices of the Peace in the Quarter-Sessions for erecting of a Cottage.

*To the Worshipful the Justices of the Peace, at the General Quarter-Sessions of the Peace to be holden at, &c. in the County, of, &c. on, &c.*

The humble Petition of *A. B.* Labourer,

Sheweth,

**T**HAT whereas your Petitioner, being with his Wife and Children settled as an Inhabitant of and in the said Parish of, &c. and at present destitute of an Habitation, hath by Address made to *C. T. Esq;* Lord of the Manor of, &c. aforesaid, obtained his Consent under his Hand and Seal, for your Petitioner to erect and set up a Cottage on the Waste within the Parish of, &c. aforesaid, for an Habitation for himself and his Family, if an Order of Sessions can be obtained for Confirmation thereof, as by the Paper hereto annexed doth appear.

May You therefore be pleased to grant unto your poor Petitioner the Order of this Court, whereby your said Petitioner may be enabled to set up a Cottage for an Habitation for himself and poor Family, on some convenient Place on the Waste within the Manor, of, &c. aforesaid, to be assigned by the said *C. T.* or his Steward.

And your Petitioner shall ever pray, &c.

An

## An Order of Sessions for erecting a Cottage.

At the General Quarter-Sessions of the Peace,  
 &c. held, &c.

Essex, ff. **W** Hereas A. B. of, &c. Labourer, hath obtained Consent of C. T. Esq; Lord of the Manor of, &c. in the County aforesaid, to erect and set up a Cottage, for an Habitation for himself and Family, in some convenient Place on the Waste in the Parish of, &c. aforesaid, provided an Order of Sessions be procured for the Confirmation thereof: And the said A. B. having humbly petitioned and besought us to grant such an Order; We do therefore hereby Order and give our Consent, that the said A. B. shall and may erect and set up a Cottage for the Habitation of himself and Family, on some Place in the Waste in the Parish of, &c. aforesaid, according to his Petition, and the Consent of the said C. T. In Witness, &c.

## Indictment for building a Cottage.

Middlesex, ff. **T** HE Jurors, &c. do present, That C. P. of M. in the said County of Middlesex, on the 30th Day of June, in the eighth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God King of Great Britain, &c. at M. aforesaid, in the County aforesaid, erected a certain Cottage for Habitation, and then and there for the Space of ten Months and more, voluntarily sustained, maintained and upheld the said Cottage so erected for Habitation, whereas in fact four Acres of Land of his Freehold, measureable according to the Form of the Statute, to be continually occupied with the said Cottage, were never adjoined or assigned, against the Form of the Statute in such Case made and provided, and also against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

## County-Court.

**S** Heriff, Under-Sheriff, or Sheriff's Clerk, entering Plaintiff in County-Court, in Absence of the Plaintiff, or Attorney, or above one Plaintiff in one Cause, they or Plaintiff

Plaintiff may be examined by a Justice of Peace, and he shall certify that Examination three Months afterwards into the Exchequer, and the Offender must pay 40*s.* to the King and Prosecutor.

Sheriff must issue Estreats out of the County-Court. Two Justices (*Quorum unus*) shall view them, and there must be two Parts indented and sealed by the two Justices, and Sheriff, and one of them must remain with the Sheriff.  
1 H. 7. c. 1, 15.

## Customs and Custom-house Officers. Vide Smuglers.

**C**USTOM is a Duty paid to the King on the Importation or Exportation of Merchandize.

If any Person shall cause any Goods for which Custom is to be paid, to be landed or convey'd away without the Entry made, and the Collectors of the Customs agreed with; the chief Magistrate of the Port or the Place next adjoining, may at any Time (within a Month after the Offence) issue out a Warrant for any Person with the Assistance of a Constable, &c. to enter the House in the Day-time, where the Goods are suspected to be concealed, and in Case of Resistance, to break open the House, and seise the Goods.

Persons running Goods.

But there must be Information on Oath first given to the Magistrate, and if a House be searched wrongfully, the Party shall recover full Damages and Costs against each Informer.

If a Carman or other Person shall assist in taking up, landing, shipping, or carrying away any Goods, &c. without Warrant, or an Officer of the Customs being present, and the Offence shall be proved by the Oath of two Witnesses before the Justice of the Peace, such Justice of Peace may commit such Offender 'till he find Sureties for his good Behaviour, or be discharged by Order of the Lord Treasurer, &c. and for the second Offence to be committed for two Months, or 'till he pay 5*l.* to the Sheriff for the Use of the King, or be discharged as above,

How those who assist at running Goods are to be punished.

3 & 14 Car. 2. c. 11.

If any Person resist, hinder, affront, or abuse any Officer of the Customs, or his Deputy, in the Execution of his Office, the Offender shall be committed by the next Justice, 'till the next Quarter-Sessions, where he may be

Persons resisting Custom-house Officers, how punished.



## Customs and Custom-house Officers

be fined not exceeding 100*l.* and he is to remain in Prison 'till discharged by Order of the Exchequer, or discover the Person who employ'd him. 13 & 14 Geo. 2. cap. 11.

Officers making false Certificate.

Custom-house Officers making false Certificates of Goods that should have been landed, shall lose their Employment, forfeit 50*l.* and suffer one Year's Imprisonment; and if any Officer belonging to the Customs take Bribe, or connive at any false Entry, he shall forfeit 100*l.* and be incapable of any Employment, and the Person giving such Bribe, shall forfeit 50*l.* Persons counterfeiting or falsifying any Certificate, Return, &c. or other Custom-house Warrant, forfeit 100*l.* and by 5 Geo. 1. cap. 11. Officers of the Customs making collusive Seizures, forfeit 500*l.*

Captains of Men of War importing Goods, &c.

Captains and Masters, &c. of Ships of War, with Goods brought from beyond Sea, shall not unload such Wares into any Boat, Bottom, or Lighter, or lay on Land 'till Entry thereof be made at the Custom-house on Penalty of 100*l.*

Above eight together resisting Officer to be transported.

If any Officer of the Customs be hindred, wounded or beaten in the Execution of his Office, by any Person armed with Clubs, &c. to the Number of eight, or more such Offenders shall be transported for any Term not exceeding seven Years; and if they return, they shall be guilty of Felony, and have Execution awarded against them. 6 Geo. 1. cap. 21.

But if such Offender within two Months after his Conviction, and before his Conviction, shall discover two or more of his Aecompllices to the Commissioners of the Customs, so as they be convicted of the said Offence, the Discoverer shall have 40*l.* for every Offender discover'd and shall himself be discharged.

Any other Person discovering, within three Months after the Offence, &c. shall have the like Reward of 40*l.* to be paid by the Cashier of the Customs. 6 G. 1. cap. 21.

Seizures of Vessels of 15 Tons or under, to be determined by two Justices.

All Seizures of Vessels of fifteen Tuns or under, whether made for carrying uncustomed or prohibited Goods from Ships inwards, or for re-landing Certificate or Debenture Goods from Ships outwards, &c. shall be determined by any two Justices of the Peace near the Place where the Seizure shall be made, who are to issue out the Summons, give publick Notice, &c. and their Judgment shall be final; and Justices of Peace of London and Westminster have the like Power in determining such Seizures as the Justices of any other Places.

If any foreign Brandy, &c. be imported into this Kingdom in any Vessel of 40 Tons or under, (except each Seaman two Gallons) such Vessel and the Brandy, or the Value thereof shall be forfeited. Boats Pinnaces and Barges not belonging to the King, Merchants Ships, or not licensed by the Admiralty) made to row with more than four Oars in *Middlesex, Surrey, Kent or Essex, &c.* are also liable to Forfeiture, and the Owners to a Penalty of 40*l.*  
*Stat. 8. G. 1. c. 18.*

Brandy imported in a Vessel under 40 Tons forfeited, &c.

No Customer, Controller, Searcher, Surveyor of Searchers, or their Clerks, Deputies, Ministers, Factors, Servants shall have any Ship of their own, use Merchandize, keep a Wharf, Inn or Tavern, or be a Factor, Attorney, or Host to a Merchant, in Pain of 40*l.* to be divided betwixt the King and the Prosecutor. 20 *H. 6. cap. 5.*

No Custom-house Officer to Merchandize or have Part of a Ship.

In every Suit, wherein Officers of the Customs, or Persons authorized to put in Execution the Act of Navigation, or others acting in Aid of them, shall be prosecuted; they may plead the General Issue, and give this or the said Act in Evidence.

Any Person entering a Claim in a Court where prohibited or uncustomed Goods are prosecuted, must give Security in the Penalty of 30*l.* to answer and pay Costs occasioned by such Claim, and in Default thereof the Goods shall be recovered. 8 *Ann. c. 7.*

Persons claiming Goods must give Security to pay Costs.

Fees of Custom-house Officers allowed by 12 *Car. 2. cap. 4.* are continued 'till altered by Parliament.

Officers of Customs imbezilling any Goods lodged in any Ware-house in his Custody, forfeit double the Value to the Party grieved, with full Costs. 9 *Ann. cap. 21.*

All Officers of the Customs shall take an Oath before two Justices of Peace, that they will not receive any Reward or Gratuity, other than their respective Salaries, or the regular Fees established by Law. And for neglecting or refusing to take the said Oath shall forfeit their Office or Employment.

Officers must Swear to take no more than their due Fee.

The Persons administering the said Oath shall certify the same to the next General Quarter-Sessions of the Peace of the proper County, there to be recorded. 6 *W. 3. c. 1.*

# Customs and Custom-house Officers.

A Warrant against those who abuse or resist a Custom-house Officer, and a *Mittimus* to send the Offender to Gaol.

Essex, ff. **W** Hereas Complaint hath been made unto me, by C. D. of R. &c. being an Officer of His Majesty's Customs, That L. M. and S. C. of R. asforesaid, Yeomen, did lately with Force of Arms resist the said C. D. at F. in your County, being then in the Execution of his said Office: These are therefore in His Majesty's Name to command you the Constable of, &c. to apprehend the said L. M. and S. C. and to deliver them to the Keeper of the common Gaol in the said County, together with this Warrant; hereby also commanding you the said Keeper to take into your Custody the said L. M. and S. C. and them safely to keep until the next Quarter-Sessions, which shall be held for the same County, there to be punished according to the Statute in that Case made and provided: And hereof fail not at your Perils. Given, &c.

A Warrant to Search for Goods (for which Custom ought to be paid) which are privately conveyed away, and concealed.

13 & 14 Car. 2.  
cap. 11.

**W** Hereas D. N. of, &c. Gent. hath this Day made Information on Oath before me T. C. Esq; one of His Majesty's Justices of the Peace for this County, That on, &c. last past, about the Hour of Ten at Night, he saw S. N. of, &c. land at the Key of, &c. from the Ship called, &c. lately arrived from Nants in France, two Casks of Liquor about the Size of Quarter Barrels, and convey them to his House situate in, &c. asforesaid, and the said D. N. having searched the Custom-house Books, and finding no Entry made of the said Barrels of Liquor, or any Agreement made with the Collector for the Custom thereof: And the said S. N. being no ways concerned by Profession or otherwise in Foreign Liquors; and the said D. N. having produced a Witness to prove that he drank Brandy and Red Wine on, &c. last at the House of the said S. N. who hath proved the same accordingly; all which being considered, there is good Reason to suspect that the said S. N. hath concealed Liquors for which Duties are payable to the Crown, with Intent to defraud His Majesty, and contrary to an Act of Parliament in that Case made.



made: These are therefore to command you to assist the said D. N. in the entring of the House, and to enter with him into the House of the said S. N. and search for the said Barrels of Liquor, or any other foreign Liquors for which Custom ought to be paid, which may be concealed there; and in Case you meet with any Resistance, that you do enter the said House by Force; and if you find any such Liquors, that you do seize the same as forfeited, &c. Given, &c.

**A Warrant against an Offender assisting in the Landing Goods, and carrying them away without paying Custom.**

Whereas Complaint hath been made unto me, that A. S. of, &c. hath lately assisted in the Landing and Carrying away several Goods at M. in the said County, for which a certain Duty was due, and payable to His Majesty, which was not paid: And whereas it appears unto me, upon the Examination of, &c. and others, that he the said A. S. had not any Warrant for his so doing; and that he had not given Notice thereof to any Officer of the Customs; and that no such Officer was there present: These are therefore in His Majesty's Name to command you to apprehend the said A. S. and bring him before me, or some other Justice of the Peace for this County, to answer the Premises. And hereof fail not. Given, &c.

Two Witnesses, 13 & 14 Car. 2. c. 11.

**Cutting out Tongues, &c. Vide Felony.**

## **Deer-Stealing.**

By Stat. 5 Eliz. c. 11. Entring any Park to kill or chase Deer without License of the Owner must suffer three Months Imprisonment, and be bound to good behaviour for seven Years, besides treble Damages to Party grieved. Offender making Acknowledgment and Satisfaction in Sessions to Party grieved, may be released.

5 Eliz. c. 11.

By 3 Jac. 1. c. 13. Any Man convicted in the Session of unlawful chasing or killing any Deer, shall pay treble Damages to the Party grieved. By Stat. 7 Jac. 1. c. 13. the Party might at his Choice have treble Damages,

3 Jac. 1. c. 13.

U

mages,

**Deer-Stealing.**

mages, or 10*l.* in lieu thereof, and the Offender is to suffer three Months Imprisonment ; and afterwards to remain in Prison 'till he found Sureties for his good Behaviour for seven Years. But the Party being satisfied, the Justices in Sessions might release the good Behaviour.

13 Car. 2. c. 10.

By Stat. 13 Car. 2. c. 10. not only for coursing and killing, but hurting or taking away Deer in any Ground where Deer are kept, the Forfeiture is 20*l.* one Moiety to the Informer, the other to the Owner of the Deer.

Prosecution must be in six Months by Confession, or one Witness on Oath before one Justice, refusing to pay, and for want of Distress, to be committed to the House of Correction for six Months, or Gaol for a Year, must give Security for good Behaviour for a Year.

The Offence must be against the Consent of the Owner, or the Person intrusted to keep the Deer ; and those, who are aiding and assisting therein, incur the same Punishment.

3 & 4 W. &  
M. c. 10.

By 3 & 4 W. & M. c. 10. 'tis 20*l.* Penalty for coursing or hunting Deer, and for taking in Toils, killing and wounding Deer, 30*l.* for every Deer so taken, killed or wounded, to be divided between Owner, Poor, and Informer. Prosecution within a Year before one Justice, Conviction by Confession, or one Witness upon Oath, or by Verdict, &c. on Indictment before a Judge of Gaol-Delivery ; to be levied by Distress and Sale, by Warrant from one Justice of the County where the Fact was done, or the Offender taken, for want to be committed for a Year, and stand in the Pillory an Hour on a Market-day in a Town next adjoining to, &c. Constable may by Warrant from one Justice search Houses, &c. for Venison, Deer Skins or Toils ; and if any found, Party not giving a good Account how he came by them, shall be liable to the same Penalties as for killing Deer. Constable must not keep the Offender in Custody above two Days.

N. B. By 5 Eliz. c. 21. 3 Jac. 1. c. 13. & 7 Jac. 1. c. 13. Persons killing or chasing Deer in the Day-time, as well as the Night, are liable as aforesaid.

Also by the said Statutes, Imprisonment must be continued if Offender can't find Sureties for his good Behaviour as aforesaid.

By 3 & 4 W. & M. c. 10. If any Person in the Night-time pull down or destroy the Pales or Walls of any Park, Forest, &c. or other Ground inclosed, where Red or Fallow Deer are kept, he shall suffer three Months Imprisonment.

## Deer-Stealing.

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One *Pennoyer* was convicted upon the Statute of Deer-stealing, and it appearing by the Conviction that the Deer were not in a Place inclosed, upon Motion the Conviction was quash'd. *Mich. 9 W. 3. B. R. Rex ver. Pennoyer's Case.*

The Defendant was convicted at the Sessions, and fin'd for Deer-stealing, and a Writ of Error was brought in *B. R.* and the Court was mov'd, that the Offender might be bailed 'till the Errors should be determin'd; but it was denied, because he was in Execution for a Fine. *Sid. 286.*

If a Gentleman license another to chase in his Park, such a Person cannot bring others with him to hunt there, without particular Words in the License; and a Parker and Keeper may not license any one to hunt in his Master's Park. A License extends only to those mentioned.

None shall keep Deer-hays or Buck-stalls, nor shall stalk with Bush any Deer, except in his own Park, &c. under Penalty of 40*s.* per Month for keeping such Deer-hays, &c. and 10*l.* for stalking. 19 H. 7. c. 11.

Two Justices in Sessions may examine the Offender, and commit him 'till he pay the Forfeiture, of which the Justices are to have the tenth Part. 19 H. 7. c. 11.

By 3 Jac. 1. c. 13. he who keeps a Gun to kill Deer, not having 40*s.* per Ann. in Lands, or 200*l.* in Goods, any Person having 100*l.* per Ann. may take away the Gun and keep it.

No *Certiorari* to be allow'd to Deer-Stealers to remove Conviction, &c. unless the Party convicted shall before the Allowance of such *Certiorari*, and at the same Time, that Security is given for Payment of Costs and Damages to the Prosecutor, become also bound to the Justice before whom convicted, with such Sureties as Justice shall approve of in the Sum of 60*l.* for each Offence, with Condition to prosecute such *Certiorari* with Effect, and to pay the said Justice the Forfeitures due by such Conviction, to be distributed as the said Statute directs, or to tender the Person convicted to the said Justice within a Month after Conviction confirmed, or a *Procedendo* granted. And in Default thereof, it shall be lawful for the said Justice, or all other Persons whatsoever to execute such Conviction, as if no *Certiorari* had been awarded: and after Confirmation of Conviction upon the said Statute by any superior Court, and delivering the Rule to the said Justice of Conviction so confirm'd, such Justice may then proceed against the Offender, as if a *Procedendo* had been granted. Persons convicted shall, before discharged out of Custody, become bound to Persons against whom



## Deer-Stealing.

whom Offence committed, in 50*l.* for Good Behaviour, on Refusal shall be sent to Gaol 'till Bond given. Penalties to be distributed as by Stat. of 3 & 4 W. & M. c. 10. and Parties convicted by this Statute liable to Penalties and Forfeitures in the said Statute. But nothing in this Act shall repeal any former Laws for Punishment of Deer-stealing, and where any Offender is punished by this Act, he shall not be prosecuted by any other Law. 5 Geo. 1. c. 15.

Keepers of Forests, Parks, &c. being convicted for killing or taking any Red or Fallow Deer, or aiding therein without Owners Consent, forfeit 50*l.* for every Deer, to be levied on Goods and Chattels, by Distress, to be distributed as Forfeitures in the said Statute are to be distributed, for want of Imprisonment for three Years without Bail, &c. Set in the Pillory two Hours on Market-Day, by chief or under Officers of the Town. Persons pulling down, &c. Park-Pales, &c. in the Night, or by Day, being convicted by Oath of one Witness, before one Justice, shall be subject to the same Penalties in the said Statute, as for killing Deer. 9 Geo. 1. c. 28.

5 Geo. c. 15.

5 Geo. c. 28.

By 5 Geo. c. 28. Persons entering into any Park, &c. and wilfully wounding or killing any Deer without Consent of the Owner, or Person intrusted with the Park, &c. or being aiding and assisting in committing such Offence, being indicted before any Judge or Justice of Gaol-Delivery, and by Verdict or Confession convicted, shall be sent to some Plantation in *America* for Seven Years, by Order of Court to be convey'd to a Person who shall contract for Transportation. 5 Geo. c. 28.

By Stat. 8 Geo. c. 18. whenever any Person shall for any Offence committed against any Law in Being, for the better Preservation of the Game, be liable to a Penalty upon Conviction, before a Justice of Peace, it shall be lawful to proceed to recover the said Penalty, either by Information and Conviction before a Justice of Peace, or to sue for the same by Action of Debt in any Court of Record, and the Plaintiff shall have double Costs.

But the Suits and Actions to be brought are to be commenced before the End of the next Term after the Offence committed; and there must not be a double or second Prosecution, one on this Law, and another on any Laws already in Being.

A Justice at Discretion may either grant, or not grant his Warrant to search for Deer stolen, or for stolen Goods.

*Note*, That by 3 & 4 W. & M. c. 10. All Owners of Deer kept in any inclosed Grounds, and all Persons acting under them, may oppose and resist Offenders, and be thereby indemnified for so doing, as well as if the Fact had been committed within any antient Forest, Chase or Park. And all Persons for putting that Act in Execution may plead the General Issue, and give the Special Matter in Evidence. And no Offender punish'd by 3 & 4 W. & M. c. 10. shall be prosecuted on Stat. 1 H. 7. c. 7. or 5 Eliz. c. 21. or 3 Ja. 1. c. 13. or 13 Car. 2. c. 10. or on any other Statute for the same Offence.

By Stat. 9 Geo. 1. c. 28. Entering into a Park or Pad-dock, or other inclosed Ground, where Deer are usually kept, and willfully wounding or killing any Red or Fallow Deer there, without the Consent of the Owner, or Person intrusted with the Custody of the Park, or shall be aiding therein, and being indicted and convicted there-of by Verdict, or by his own Confession, shall be transported for Seven Years; and the Court may make over such Offender to the Use of any Person who will con-tract for the Performance of his Transportation.

Penalty of wounding or killing Deer in inclosed Place, is Transportation.

If any Venison, or Skin of Deer shall be found in the Custody of any Person, and it shall appear that such Person bought it of one who might be justly suspected to have unlawfully come by the same, and does not produce the Party of whom he bought it, or prove on Oath the Name and Place of Abode of such Party, then the Person who bought it shall be convicted of such Offence by one or more Justices of the Peace, and shall be sub-ject to the Penalties inflicted for killing a Deer, by the Act 3 & 4 W. & M. c. 10.

Not producing Party of whom Venison is bought is a Conviction.

This Act at first was to continue in Force for three Years, from 1 June, 1723. and from thence to the End of the then next Session, but was by 12 Geo. 1. continu'd from the Expiration thereof for the Space of five Years, and from thence to the End of the then next Session of Par-liament.

Upon a *Certiorari* on a Conviction for Deer-stealing it was objected, that it appear'd to be a Year after the Day of the Information; but adjudg'd that it is good, because it is not from the Conviction, but from the In-formation, that the Time is to be computed; for if the information is in due Time, the Conviction may be at any Time afterwards, and the Penalty need not be di-tributed by the Conviction, (*viz.*) 10*l.* to the Informer, 10*l.* to the Party grieved, and 10*l.* to the Poor; for the Judgment in such Cases seldom makes a Distribution,

Cases of Deer-Stealing.

it is enough to say, that *Convictus est & forisfaciat* 30*l.* *juxta formam Stat.* 1 Salk. 381.

Penalty of pulling down Pales or Wall of a Park.

Any Person pulling down, or causing to be pulled down, a Pale or Pales, or Wall of any Park, or inclosed Place where Red or Fallow Deer are kept, without the Consent of the Owner, and being convicted thereof by his own Confession, or Oath of one Witness, before one Justice of the County where the Offence was done, shall be subject to the Forfeitures and Penalties by this Act for the killing one Deer, in the same Manner as if he had been convicted thereof.

Defendant may plead General Issue.

A Defendant sued for putting this Act, or 3 & 4 W. c. 10. in Execution, may plead the General Issue, and give the Acts and Special Matter in Evidence; and if he recover, shall have treble Costs, to be recover'd as any other Costs are.

There were two Persons convicted for Deer-stealing, and Judgment was given that each of them should forfeit 30*l.* and this being removed into *B. R.* it was objected, that there ought to be but one 30*l.* forfeited; but adjudg'd that the Forfeiture is not in Nature of a Satisfaction to the Party grieved, but as a Punishment to the Offender, and the Words of the Statute are, that they shall respectively forfeit; and Crimes are several, though Debts are joint.

Any Justice may issue his Warrant to search for stolen Venison.

Any Justice of the Peace may issue his Warrant to any Constable, Headborough, or other Peace-Officers, to enter into any House to search for Venison stolen, contrary to the Statutes against Deer-stealers, in such Manner as he may issue his Warrant to search for stolen Goods.

Person killed or wounded in taking Deer-Stealer, intitled to 50*l.* to be paid by the Sheriff.

If any Person shall apprehend, or cause to be convicted any of the Offenders above-mention'd, and shall be killed or wounded, so as to lose an Eye, or the Use of any Limb, in apprehending or endeavouring to apprehend such Offenders, on Proof thereof at the General Quarter-Sessions for the County, &c. where the Offence was committed, the Justices shall give a Certificate thereof to the Person so wounded, or the Executors, &c. of the Party so killed, which shall intitle them to receive of the Sheriff of the County 50*l.* to be allow'd the Sheriff in passing his Accounts, which 50*l.* the Sheriff is required to pay within thirty Days from the Day on which the Certificate shall be shewn him, on the Forfeiture of 10*l.* to the Person to whom the Certificate is given, for which 10*l.* as well as the 50*l.* such Person may bring his Action upon the Case against the Sheriff, as for Money had and receiv'd to his Use.



Any Prosecution for any Offence against the Statute 3 & 4 W. & M. c. 10. for the more effectual Discovery and Punishment of Deer-stealers, shall be commenced within three Years from the Time of the Offence committed, but not after.

Every Offence against this Act may be inquir'd of, and tried in any County in *England*, as if the Fact had been therein committed; but no Attainder for any of the Offences made Felony by this Act, shall make any Corruption of Blood, Loss of Dower, or Forfeiture of Lands or Tenements, Goods or Chattels.

This Act shall be openly read at every Quarter-Sessions, and at every Leet or Law-Day.

Offences triable in any County in *England*.

## A Warrant for a Buck.

**UPON** Sight hereof, you are to kill and deliver to J. S. Esq; one fat Buck of this Season, for which this shall be your Warrant.

A. B.

## A Warrant to apprehend a Person for unlawful Hunting and Courting of Deer.

*Essex, ff.* **W** Hereas Complaint hath been made unto me by C. D. of, &c. Keeper to the Honourable C. Lord W. that A. B. of, &c. in and upon, &c. last past, did unlawfully Course and Hunt several Deer in the Park of the said C. Lord W. situate, &c. contrary to the Act of Parliament in that Case made: These are therefore to require you upon Sight hereof, to apprehend the said A. B. and to bring him before me, or some other of his Majesty's Justices of the Peace for this County, to answer the Premises. Given, &c.

## A Warrant against a Person for stealing Deer (or as the Fact is.)

*Essex, ff.* **W** Hereas it has been duly proved before me, 3 & 4 W. & M. c. 10. that A. B. of M. in the County aforesaid, One Justice. did on the Tenth of October last past, unlawfully Course [or as the Fact is) one Fallow Deer in the Park of, &c. without his Consent, or the Person intrusted with the keeping thereof, contrary to the Statute in that Case made and provided: These are therefore in his Majesty's Name, to require

For every Deer  
wounded 30 l.

you to levy by Distress and Sale of the Goods of the said A. B. the Sum of 20 l. which said Sum is forfeited by him, being convicted before me for the said Offence; and that you pay one third Part thereof to M. N. who informed me of the said Offence; and another third Part unto the Church-wardens or Overseers of the Poor of the Parish of L. where the said Offence was committed, for the Use of the Poor of the said Parish; and the other Part thereof to J. S. the Owner of the said Deer; and if no Distress can be found and taken, that then you certify the same to me. Given, &c.

The like Warrant *mutatis mutandis*, for assisting or aiding.

### Commitment for Want of Distress.

Essex, ff. **W** Hereas you the Constable, &c. were lately required, by Warrant under my Hand and Seal, to levy the Sum of 20 l. by Distress and Sale of the Goods of A. B. of M. &c. by him forfeited for an Offence, which he committed against the Form of the Statute made in the third and fourth Years of the late King William and Queen Mary, intituled (An Act, &c.) And whereas I have been certified by you, That you cannot find a sufficient Distress to be taken of the Goods and Chattels of the said A. B. for the Offence aforesaid: These are therefore in his Majesty's Name, to require you to apprehend the said A. B. and to convey him safely to the Gaol of the said County, and deliver him to the Keeper thereof, together with this my Warrant for your so doing: Requiring also you the aforesaid Keeper to take into your Custody the said A. B. and him safely to keep for the Space of one whole Year next ensuing; and that you then deliver him to the chief Officer of K. being the Town next adjoining to the Place where the Offence was committed, or some of his under Officers, together with this Precept, who are hereby required to set the said A. B. in the Pillory in the said Town, on some Market-Day, for the Space of one Hour. And hereof fail not, as you will severally answer the contrary at your respective Perils. Given, &c.

The like Warrant *mutatis mutandis*, to levy 30 l. for taking in Toils, and the like Commitment for Want of Distress, or against aiding and assisting.

A Warrant

# A Warrant to make a Search for stolen Venison, and to enter Houses of suspected Persons.

Essex, ff. **W** Hereas T. C. of, &c. has this Day made <sup>3 & 4 W. & M. cap. 10.</sup> Complaint unto me, that several Fallow Deer have been lately unlawfully hunted, killed and carried away by Persons unknown, in and from the Park of, &c. and that several Deer-Skins have been lately seen in your Parish, particularly in the House of T. P. Labourer: These are therefore in his Majesty's Name, to command you to enter into, and search the House of the said T. P. and into the Houses, Out-houses, Yards, and other Places of such other Persons in the Parish whom you shall justly suspect, or be informed to have any Venison or Skins of Deer, and to have unlawfully come by the same; and if you shall find any such, then you shall apprehend the Persons in whose Possession the same shall be found, and bring them before me, or some other Justice of the Peace for this County, to be proceeded against according to Law. Given, &c.

# A Warrant to levy the 30*l*. for not giving an Account how he came by such Venison, or Skins.

Essex, ff. **W** Hereas A. B. of E. hath this present Day been duly convicted before me, by not giving good Account to me, how he came by certain Pieces of Venison, which upon Search were found in his House, in the Parish of E. &c. and not being able to produce the Party of whom he bought the same, or some credible Witness, to make oath of the Sale thereof to him, so that he hath forfeited the sum of 30*l*. according to the Form of the Statute in that case made and provided: These are therefore to require you withwith to levy the said 30*l*. so forfeited as aforesaid, by Distress and Sale of the Goods and Chattels of the said A. B. and that you pay one third Part thereof, ut prius.

Note; Before any Certiorari shall be allow'd, the Offender must give Bond to the Prosecutor to pay full Costs, within a Month after Conviction confirmed, or a Process shall be allow'd; these Costs are to be ascertained on Oath.

The



## The Condition of the Bond.

Noverint uni-  
versi, &c. Nos,  
&c. there must  
be two Sure-  
ties, such as the  
Justice shall  
approve. The  
Condition of  
the said Bond.

**T**HE Condition of this Obligation is such, That *whereas the above bounden A. B. was lately convicted before F. C. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, at the Prosecution of S. T. above-named, for that he the said A. B. had several Pieces of Venison and Deer-Skins found in his House in E. &c. And not being able to give a good Account how he came by the same, in such Manner as is required by a Statute in that Case made and provided: And whereas the said A. B. hath obtain'd a Writ of Certiorari to remove the said Conviction, and the Proceedings thereon into his Majesty's Court of King's Bench at Westminster: If therefore the said A. B. shall pay, or cause to be paid unto the said S. T. his full Costs to be ascertained upon the Oath of the said S. T. which he shall sustain in any wise concerning the Prosecution of the said Conviction, within one Month after the same shall be confirmed, or a Writ of Procedendo shall be allowed thereon by the Court, that then this Obligation shall be void.*

## A Commitment for pulling down Pales or Walls of a Park.

3 & 4 W. &  
M. cap. 10.  
three Months  
Imprisonment  
without Bail.

**W**Hereas P. Q. of, &c. has made Oath before me, That F. G. of your Parish did on, &c. last in the Night-time pull down and destroy several Pales, or a large Quantity of Wall belonging to the Park of S. G. of, &c. in the County aforesaid, Esq; contrary to an Act of Parliament in that Case made: These are therefore in his Majesty's Name, to command you to apprehend the said F. G. and to convey him to the Gaol of, &c. aforesaid, and deliver him to the Keeper thereof with this Warrant: Hereby requiring you the said Keeper, to take the said F. G. into your Custody, and him safely to keep for the Space of three Months without Bail, according to the Directions of the Statutes made for punishing such Offences. Given, &c.

Owen 20.  
2 Leonard 222.

Deer in Park shall go the Heir, not to the Executor.

Waste cannot be assigned for killing Deer, except he kills them all.

A Person lending his Dogs to kill Deer in a Park, and Horses to hunt and carry it away, is aiding and assisting therein,

therein, within the Statute of 3 & 4 W. & M. c. 10. though he be not actually present. *Hill. 1 Ann.*

A Justice of Peace entred into a *Glover's House*, and finding a Deer-Skin, ask'd him how he came by it, who told him that he bought it of R. G. and he not giving a good Account how he came by it, the Justice convicted him, and held good.

Conviction of Deer-Stealing was affirm'd in *B. R.* whereupon a *Levari facias* was awarded to the Sheriff, who levied and sold the Goods; adjudged that the Sale was good, because the Record cannot be sent back again to the Justices; and as *B. R.* have Power to confirm the Conviction, by Consequence they have Power to award Execution, which must be to the Sheriff who is their Officer, and not to the Constable; and it must be by *Levari facias*, because the Words of the Statute are, *That the Offender shall forfeit, &c. to be levied by Distress*; and where the Law gives a Distress for a publick Benefit, the Officer may sell. *1 Salk. 379.*

**Deodand.** Vide Casual Death.

## Dissenters.

Whether it be for the publick Good to suffer more than one Religion in a Country, has been *vexata quaestio*. I shall not pretend to determine it; but all Religions, and all Governments in the World, agree not to have two Religions in the Administration of the Government.

In this View the Clergy of the Church of *England*, have generally stood firm to the Interest of the Crown, and those who opposed that Interest in Civil Affairs, have always cherished the other Party, amusing the World with the Notion of a tender Conscience, while some leading and designing Persons have by sly Insinuations and Artifices labour'd to make both Parties Tools by Turns, in order to make way for their own private Advancement.

So that about the Time of the Revolution, the cunning Men on both Sides beginning to understand one another, a Law was made, *Anno 1 W. & M. c. 18.* that neither the Statutes of 1 *Eliz. c. 2.* 23 *Eliz. c. 1.* nor 3 *Jac. 1. c. 4.* should extend to Persons dissenting from the Church, who must subscribe the Declaration mention'd in the Stat. of 30 *Car. 2. c. 1.* and take the Oaths.

Dissenters exempted from Penalties by 1 W. & M.

*N. B.*

*N. B.* This Act of 1 *W. & M. c. 18.* does not extend to Atheists, Deists, Jews, &c. or to any Person denying the *Trinity*.

Oaths, &c. to be taken in Quarter-Sessions.

These Oaths and Subscriptions must be administered and taken in the Quarter-Sessions; and those who take the Oaths must pay 6*d.* for registering, and 6*d.* for a Certificate. After which they shall not be liable to the Penalties of 35 *Eliz. c. 1.* and 23 *Car. 2. c. 1.* nor be prosecuted in any Ecclesiastical Court for Non-conformity. But then they must not hold their Meetings in Places with Doors lock'd, barr'd or bolted, nor until their Place of Worship is certified to the Bishop of the Diocese, or to the Archdeacon, or to the Justices at Quarter-Sessions, and registred there, and they have a Certificate thereof.

Meetings not to be kept with bolted Doors.

When their Preachers have taken the Oaths and subscribed the Declaration at the Quarter-Sessions where they live, they shall not be liable to the Penalties in the Statute of 17 *Car. 2. c. 2.* nor to the Penalties in 22 *Car. 2. c. 1.* nor to those mention'd in 13 & 14 *Car. 2. c. 1.*

But then these Preachers must declare their Approbation, and subscribe the Articles of Religion, except Part of the 20th Article, and except the 34th, 35th and 36th Articles. Preachers thus qualified, shall not serve on Juries, and shall be exempt from Parish-Offices.

And all other Dissenters, if chose to Parish Offices, may execute it by a Deputy.

Persons disturbing Preachers.

If any Person disturb them in preaching, he shall find Sureties to be bound with himself in a Recognizance of 50*l.* to appear at the Sessions, and being convicted there shall forfeit 20*l.* to the King.

If he will not find Sureties, he shall be committed to Prison till next Sessions.

The Proof must be by two Witnesses on Oath before one Justice.

Anabaptists must subscribe the Articles of Religion, except, &c.

If Anabaptist Preachers subscribe the Articles of Religion, except that Part of the 27th Article which relates to Infant Baptism, and shall take the Oaths, and make and subscribe the Declaration, then they shall enjoy the same Advantages with other Dissenting Preachers.

Any Justice of Peace may require a Dissenter to make and subscribe the said Declaration, and to take the aforesaid Oaths; but because there are some Persons who scruple to take any Oath, therefore Provision is made to exempt them from the Penalties aforesaid, if they make and subscribe the said Declaration, and likewise the Declaration of Fidelity and Profession of Belief following;



## The Declaration of Fidelity.

**I** A. B. do sincerely promise, and solemnly declare before God, and the World, that I will be true and faithful to King George. And I do solemnly profess and declare, That I do from my Heart, Abhor, Detest, and Renounce as Impious and Heretical, that Damnable Doctrine and Position, That Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever; And I do declare, That no Foreign Prince, Person, Prelate, State, or Potentate hath, or ought to have any Power, Jurisdiction, Superiority, Pre-eminence, or Authority, Ecclesiastical or Spiritual within this Realm.

They must likewise subscribe a Profession of their Christian Belief in these Words.

## The Profession of Belief.

**I** A. B. profess Faith in God the Father, and in Jesus Christ the Eternal Son, the true God, and the Holy Spirit, One God blessed for ever more, and do acknowledge the Holy Scriptures of the Old and New Testament, to be given by Divine Inspiration.

These Declarations and Subscriptions must be recorded at the Quarter-Sessions.

Declarations, &c. must be recorded at Quarter-Sessions.

If they scruple the taking any Oath, or making the said Declarations, upon Refusal, the Justice may commit them to Prison without Bail, and certify their Names in the next Sessions where he resides.

If the Person committed shall upon a second Tender at the Sessions refuse, &c. it shall be recorded, and he shall then be taken for a Popish Recusant convict.

Persons scrupling to take an Oath, &c.

And if any Person refuse the Oath when tendered, he shall not be admitted to make and subscribe the Declarations, tho' required by a Justice of Peace at the Sessions; if he cannot within thirty-one Days after such Tender produce two Protestant Witnesses to testify on Oath, that they believe him to be a Protestant Dissenter, or produce a Certificate under the Hands of four Protestants conformable to the Church, or who have taken the Oaths, &c. and he must likewise have a Certificate under the

Must produce Protestant Witnesses, or a Certificate under the Hands of four, &c. And likewise a Certificate under the Hands of six, &c.

Hands

Hands and Seals of six, or more of the Congregation to which he belongs, owning him to be one of them.

And until such Witnesses and Certificate are produced, the Justice may take a Recognizance with two Sureties of 50*l.* for producing the same, or otherwise he shall be committed till that Time.

The same Act ordains that all Laws formerly made for frequenting Divine Service on the Lord's Day are in Force against all Persons, except they come to some religious Assembly allowed by Law. They may be punished likewise by the Censures of the Church, having no reasonable Excuse for absenting. 3 *Lev.* 61.

And if they did forbear for a Year after a Certificate thereof made by the Ordinary into *B. R.* then one Justice of Peace of the County where they dwelt, might bind them with two Sureties in 200*l.* at the least to be of the good Behaviour, which Recognizance is not to be discharged till they come to Church. 23 *Eliz. cap.* 1.

The Forfeiture was to be divided between the King, Poor, and Prosecutor; and if not able, or not paid within three Months after Conviction, must be committed till they conform or pay it.

The Prosecution upon these Acts is to be within a Year and a Day, after the Offence, and before the Justices in Sessions.

But Conformity before Judgment, either before the Bishop of the Diocese, or in Sessions, discharges the Penalties.

Several Persons were indicted upon this Stat of 23 *Eliz. c.* 1. 4 *Leon.* 54. and were outlawed upon it, and moved the Court to be discharged upon Submission and Conformity; but it was denied until the Outlawry should be reversed, or they pardoned.

For a Precedent for an Action of Debt brought on this Stat. See 1 *Lutw.* 201.

By 29 *Eliz. c.* 6. it was enacted, That the Conviction should be at *B. R.* or at the Assizes, and that all Grants with Powers of Revocation should be void against the Queen, so as not to deprive her to levy the said Forfeiture of 20*l.* per Month. *N. B.* That by the 23 *Eliz. c.* 1. the Informer is to have a third Part of the Forfeiture but if the Defendant is convicted by Indictment upon 29 *Eliz. c.* 6. before an Information brought, then the Queen is to have the Penalty, and therefore such a Conviction is a good Plea in Bar to any Information afterward brought.

Noy 117.  
Lane 60.  
1 *Lut.* 208.

2 *Gro.* 142.  
3 *Lev.* 61.

By Stat. 3 *Jac.* 1. c. 4. One Justice of the Division where a Person liveth not coming to Church, may upon Proof of this Default, by one Witness on Oath, send for the Defaulter ; and if he cannot give a Satisfactory Excuse, the Justice may send a Warrant to the Church-wardens of the Parish, to levy the 12*d.* for every Offence ; and if no Distress can be taken may commit him till paid.

One Justice may send for one not coming to Church.

If a Master retains a Servant absenting, &c. for a Month, the Master forfeits 10*l.* per Month.

Any dissenting Preacher duly qualified may officiate in any Congregation duly certified and recorded, though the same be not in the County, wherein he was qualified, but shall if required by a Justice, &c. produce a Certificate of his having qualified himself, and also subscribe the Declaration before such Justice, if thereto required.

By 5 *Geo.* c. 4. Part of the Act passed 10 *Ann.* c. 2. for preserving the Protestant Religion, by securing the Church of England, as by Law established, &c. stands repealed. As does an Act made 12 *Ann.* c. 7. to prevent the Growth of Schism, with this *Proviso*, That no Mayor, Bailiff, or other Magistrate in that Part of Great Britain called England, Wales, Berwick, Jersey or Guernsey, shall knowingly, or wilfully resort to, or be present at any publick Meeting, or religious Worship, other than of the Church of England, as by Law established, in Gown, or other peculiar Habit, or attended with Ensigns belonging to his Office, That every such Mayor, &c. being convicted by due Course of Law, shall be disabled to hold such Office, &c. and incapable of any publick Office whatsoever.

5 *Geo.* repeals Part of 10 *Ann.* and Part of 12 *Ann.*

The Form of a Certificate by four Protestants conformable within 31 Days after the Tender, &c.

WE whose Names are hereunto subscribed, being all conformable to the Church of England, do hereby certify from it doth concern, That we do verily believe, that N. S. &c. is a Protestant Dissenter. Given, &c.

The



### The Form of a Certificate by four Protestants not conformable, &c.

**W**E whose Names are hereunto subscribed, having all taken the Oaths, and subscribed the Declaration enjoined by a Statute made in the first Year of the Reign of the late King William and Queen Mary, Entituled, An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws, Do hereby certify, That we do verily believe N. S. is a Protestant Dissenter. Given, &c.

### The Form of the Certificate from six of the Congregation.

**W**E whose Names are hereunto subscribed, being Members of the Congregation of, &c. Do hereby Certify whom it may concern, That we do own N. S. of, &c. to be one of our said Congregation. Given, &c.

### An Indictment for not using the Sign of the Cross in Baptism.

Essex, ss. **T**HE Jurors, &c. do present, That T. P. late of H. in the County aforesaid, Clerk and Rector of the Parish Church of S. B. in H. in the County aforesaid, for the space of six Months last past ought to say the Common Prayers according to the Manner and Order of the Book of Common Prayer, and ought also with in the Time aforesaid to administer the Sacraments in the Church aforesaid, as they are mentioned in the aforesaid Book: Nevertheless, the said T. P. at H. aforesaid, in the County aforesaid, for the six Months aforesaid, refused to use and speak, nor did he use or speak the Common Prayer in the Parish Church aforesaid, as mentioned in that Book and that the said T. P. at H. aforesaid, in the County aforesaid, on the fourth Day of August, in the eighth Year of the Reign of our said Sovereign Lord the King, administered the Sacrament of Baptism in the Parish Church aforesaid, to a Male Infant of one C. R. in another Form than is express'd in the said Book of Common Prayer, and did not make the Sign of the Cross upon the Forehead of the same Infant in Administering the said Baptism, but then and there contemptuously refused

and denied to make the said Sign, in Contempt of our said Sovereign Lord the King, his Laws and Statutes of this Kingdom of Great Britain, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

The Statute of 3 *Ja.* 1. c. 4. gives Power to Justices in Sessions to enquire, hear and determine of all Recusants and Offenders, &c. for not coming to Church: And that at the Sessions, in which an Indictment shall be found against such an Offender, to make Proclamation, commanding him to render himself to the Sheriff of the County before the next Sessions. And if he shall not then appear, it shall be a Conviction in Law upon the said Indictment for the Offence therein mention'd, as if Trial had been by Verdict.

That upon such Conviction, he shall either in *Easter* or *Michaelmas* Term, which shall next happen, pay into the Exchequer after the Rate of 20*l.* per Month, which shall be contained in the Indictment, and for every Month afterwards without any farther Indictment or Conviction, 10*l.* per Month, by half yearly Payments in the Exchequer aforesaid, except the King will take two Parts in three of the Lands of the Offender till he conform.

This is no Judgment, because no Trial, and therefore the Conviction should be erroneous, yet no Writ of Error would lie; so that the Remedy is to quash it in the Exchequer. *Rayn.*

### For not wearing the Surplice.

*Middlesex, ff.* **T**HE Jurors, &c. do present, That M. M. late of N. in the County aforesaid, Clerk, on Sunday, that is to say, the sixth Day of September, in the eighth Year of the Reign of our Sovereign Lord the King; at N. aforesaid, in the County aforesaid, in the Parish Church there publickly celebrated Morning Prayers to divers Parishioners and Inhabitants of the same Parish, then and there being in the Church aforesaid, and at the Time of Celebrating those Prayers did not Clothe himself with, nor make use of any Surplice or other Ornament appointed to be used by Ministers within this Kingdom of Great Britain, and that M. M. on the said sixth Day of September, in the Year aforesaid, at the Time of Celebrating Prayers aforesaid, at N. aforesaid, in the Parish Church aforesaid, altogether refused to Clothe himself, or to use any Surplice, against the Form of the Statute in such Case made provided, and against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

X

For

## For disturbing a Minister in his Preaching.

Essex, ss. **T**HE Jurors, &c. do present, That D. E. late of S. in the County aforesaid, Yeoman, on the sixth Day of September, in the eighth Year of the Reign of our said Sovereign Lord the King, at S. in the County aforesaid, wilfully, publickly and contemptuously neglected and disturbed one R. F. Rector of the Church there preaching, R. F. then and there to do it by reason of his Cur there being lawfully charged, and other Enormities then and there brought upon the said R. F. to the ill Example of others offending in the like Case, and against the Form of the Statute in such Case made and provided, and also against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

Distillers. See Brewer.

Dogs. See Game and Hunting.

## Drunkennets.

**D**runkennets is an Offence for which a Man may be punished in the Ecclesiastical Court, as well as by a Justice of Peace.

By Statute 4 Ja. 1. c. 5. & 21 Ja. 1. c. 7. If any Person shall be convicted of being Drunk by the Verdict of the Justice, Oath of one Witness, or Confession, he shall forfeit 5 s. for the first Offence, to be levied by Distress within a Week after Conviction, and for want of Distress to sit in the Stocks six Hours.

And for the second Offence to be bound with two Sureties in 10 l. to be of the good Behaviour, or committed.

The Prosecution to be within six Months after the Offence.

If an Alehouse-keeper shall be convicted as above of Drunkennets, he shall be disabled to keep an Alehouse for three Years.

The inferior Officer neglecting to levy the Penalties forfeits 10 s. to be levied and disposed of as the Penalties themselves.

The Prosecution on 4 Ja. 1. c. 5. was to be, and is now before Justices of the Peace in their Sessions by way of Indictment.



Indictment, where the Offender must be convicted, but by 21 Ja. 1. c. 7. one Justice hath Power to convict this Offender as above-mentioned.

Being a Drunkard Cause to remove a Magistrate. Jenkins 173. Godbolt 514. Rol. 409.

## A Conviction of Drunkennes on Information given.

**M**emorandum, that A. B. of, &c. this Day, &c. came 21 Ja. 1. c. 7. before me C. D. Esq; one of his Majesty's Justices, &c. and exhibited an Information on Oath against E. F. Esq; That he the said E. F. on, &c. last at, &c. was very much drunk, and disordered with Liquors, in Defiance of the Statutes in that Case made, for promoting of Order and Government. And the said E. F. appearing before me, by Virtue of my Summons, and not being able to clear himself from the said Charge; I do therefore in Pursuance of the Statute pronounce the said E. F. convicted of Drunkennes, and that he hath forfeited the Penalties incurred for Offences of that Nature. Given, &c.

## A Warrant to levy the Forfeiture for the first Offence.

**W**hereas A. C. of, &c. Labourer, was by 4 Ja. 1. c. 5. the Oath of T. T. of, &c. this Day convicted before me for being Drunk on, &c. last past at the house of, &c. whereby he hath forfeited the Sum of 5 s. these are therefore in His Majesty's Name, to require you to demand of the said A. C. the said Sum of 5 s. so forfeited aforesaid, for the Use of the Poor of the said Parish &c. And if the same shall not be paid into the Hands of the Church-wardens of the said Parish, for the Use aforesaid, within the Space of one Week from the Date hereof, That you do levy it by Distress, and Sale of the Goods and Chattels of the said A. C. and if the said A. C. shall not be able to pay the said Sum of 5 s. nor hath any Goods whereof Distress may be taken to satisfy the same, That then you do commit him in the Stocks, there to remain for the Space of six Hours, according to the Direction of the Acts of Parliament in that behalf made. Given, &c.

## A Warrant on Conviction of a second Offence to bring Sureties for good Behaviour.

21 Ja. 1. c. 7. Essex, ff. **W** Hereas A. C. &c. was upon, &c. last, lawfully convicted before me for being Drunk in, &c. contrary to the Statute in that Case made: And whereas the said A. C. hath in like manner this present Day been a second time convicted before me, of being Drunk at, &c. on, &c. last: These are therefore to require you the said Constable to bring the said A. C. before me, or some other of His Majesty's Justices of the Peace for this County, to enter into a Recognizance with two Sureties for his good Behaviour, according to the Form of the Statute in that Case made and provided: And if the said A. C. shall refuse to bring such Sureties, that then you convey him to the Gaol of, &c. aforesaid, and deliver him to the Keeper thereof, hereby commanding you the said Keeper to receive the said A. C. into your Custody, and him safely to keep until he shall enter into such Recognizance as aforesaid. Given, &c.

## The Condition of the Recognizance.

**T** HE Condition of this Recognizance is such, That the above bound A. C. shall personally appear before His Majesty's Justices of the Peace at the next General Quarter-Sessions of the Peace, to be holden at, &c. for the County of, &c. aforesaid, and shall not depart the County without Leave thereof, and in the mean time shall be of good Behaviour, That then, &c. or else, &c.

## An Indictment against a Drunkard.

**T** HE Jurors, &c. do present, That A. C. late of a Place, &c. on such a Day and Year, &c. at many Days and Times before, as well as after that at S. aforesaid, in the County aforesaid, and elsewhere in divers other Places within the said County, was and was a common Drunkard and common Disturber of the Peace of our said Sovereign Lord the King, to the ill Example of Others, Subjects of our said Sovereign Lord the King, against the Peace of our said Sovereign Lord the King, Crown and Dignity, &c.

*Note* ; These Statutes do not take away any Jurisdiction which is lodged in the Ecclesiastical Courts, *pro Reformatione Morum*.

## Duelling.

**D.** and C. were indicted for a Misdemeanor, which was, that D. had challenged one by way of Duelling, and sent it by C. to the Party challenged, C. knowing the Matter. For this they were fined each 100*l.* committed for a Month without Bail, to make Recantation within that Time, as the Court should direct, and to be of the good Behaviour for seven Years. *Pasch.* 16 *Car.* 2. B. R. 1 *Sider.* 186. *pl.* 10. *Rex ver. Darcy and Collins.* 1 *Keb.* 694. *pl.* 11.

## Dyers.

**BY** Stat. 13 G. 1. It is enacted, That if any Person shall in *England* dye Black any Bays, or other Woollen Goods for Mather Blacks, not being dyed throughout with Woad, Indico, and Mather only, or shall dye black any Cloths, Long Ells, Bays, or other Woollen Goods for woaded Blacks, not being woaded throughout, he shall forfeit, *viz.*

For every long Bocking Bays, 44*s.* For every Colchester or Short Bays, 22*s.* For every Cloth deceitfully dyed black, without being woaded throughout, 40*s.* For every Piece of Bays so deceitfully dyed, 30*s.* For every Colchester or Short Bays, 12*s.* For every Perpetuana or Stuff, 4*s.* Penalties not dying with Woad, Indico, and Mather only, &c.

All Woollen Goods truly mathered Black shall be marked with a red and blue Rose, and all Woollen Goods truly woaded Black throughout shall be marked with a blue Rose only ; and if any shall counterfeit any of the said Marks, or shall affix any such Marks to any Woollen Goods deceitfully dyed, he shall forfeit 4*l.* for every Piece of Goods, to which such Marks shall be affixed.



Penalty of  
using Logwood  
in dying Blue.

Dyers may ap-  
point Search-  
ers, &c.

How Penalties  
are to be re-  
covered.

How to be  
levied.

Prosecutions  
shall be com-  
menced in 40  
Days.

Defendant may  
plead the ge-  
neral Issue.

If any Person use any Logwood in dying of blue, he shall forfeit 40 s. for every Piece of Cloth so dyed; for every long Piece of Bocking Bays, 22 s. For every Colchester or Short Bays, 12 s. And for every Perpetuana or Stuff, 4 s.

All Dyers of Woollen Cloth or Stuffs within the City of London; or within the weekly Bills of Mortality, or within Ten Miles Compass of the City, shall be subject to the Examination and Inspection of the Dyers of London, and the said Company may appoint skilful Men to be Searchers within their Limits, and out of their Limits: The Justices at the Quarter-Sessions for any County or Place, shall appoint Searchers; the Searchers, taking to their Assistance a Constable or Peace Officer at all seasonable Times of the Day, may enter into the Shop or Workhouse of any Persons using the Trade of Dying, or of any Person concern'd in the dying Woollen Goods, or in fixing such Marks, to search and examine all Cloths, Bays, &c. and if any oppose them he forfeits 10 l.

All Offences against this Act, where Forfeitures exceed 5 l. shall be recovered by Action of Debt, &c. and where the Forfeitures shall not exceed 5 l. the Offence shall be examined by two or more Justices where the Offence shall be committed, (such Justices not being concerned in the matter of Complaint) and all Forfeitures within ten Miles of London shall go, one Moiety to the Informer, and the other to the Company of Dyers; and beyond such Compass, the Whole shall go to the Informer.

And if any Offender shall not pay the Penalty, where the same shall not exceed 5 l. by twenty Days after Conviction, the Justices may issue their Warrants to the Constable to levy it by Distress, and where no Distress can be found, they may commit the Offender to the House of Correction not exceeding three Months.

All Prosecutions shall be commenced within forty Days next after the Offence committed or discovered; and if any Person find himself aggrieved by the Justices Judgment, he may appeal to the next Quarter-Sessions, giving sufficient Notice of the Appeal, whose Determination there shall be final, and they may allow reasonable Costs to either Party.

If any Suit be commenced against any Person for any thing he shall do in the Execution of the Powers by this Act granted, the Defendant may plead the General Issue, and on Verdict, &c. recover treble Costs.

This Act shall be allowed as a publick Act, in all Courts and Places of this Kingdom.

## Eggs of Fowl destroyed.

THEY who take any Eggs of Faulcon, Goss-hawk, Lanner or Swan out of their Nest, shall suffer a Year and a Day's Imprisonment, or pay a Fine, one Moiety to the King, the other to the Owner of the Ground, or if Swans Eggs, to the Owner of the Swans. 11 H. 7. c. 17.

11 H. 7. c. 17.

If any take from the Nest, or destroy the Eggs of any wild Fowl usually eaten, between the first of *March* and the last of *June*, they shall be imprisoned for a Year, or forfeit for every Crane and Bustard's Egg, 1 s. 8 d. for every Bittern, Heron, or Shovelack's Egg, 8 d. for every Egg of a Duck, Teal, or other wild Fowl, 1 d. 25 H. 8. c. 11.

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Those who shall take, or willingly destroy Eggs of Pheasant, Partridge, or Swan, and thereof shall be convicted by Confession or Oath of two Witnesses before two Justices, shall be imprisoned three Months, unless he pay to the Church-wardens of the Parish where the Offence was committed, or Party taken, the Sum of 20 s. for the Use of the Poor. 1 Ja. 2. c. 27.

Engrossers. See Forestallers.

## Egyptians.

IF any Person above Fourteen Years of Age shall call himself an *Egyptian*, or shall be in Company with those who disguise themselves in Habit, or otherwise like *Egyptians*, and continue in *England*, one Month, 'tis Felony without Benefit of Clergy, 1 & 2 Phil. 5 Mar. c. 4. and by 5 Eliz. c. 20. Clergy is taken away.

To continue in Company of *Egyptians* above a Month, is Felony.

He who transports them, forfeits 40 l. between King and Prosecutor.

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point Search-  
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How Penalties  
are to be re-  
covered.

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How to be  
levied.

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menced in 40  
Days.

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To continue in Company of Egyptians above a Month, is Felony.

## Episcopal Congregations.

Persons disturbing Episcopal Congregations in Scotland.

**P**ersons disturbing Episcopal Congregations in Scotland, or Misusing, &c. any Minister or Pastor thereof, shall be bound by one Justice in a Recognizance of 50*l.* for Appearance at next Sessions, on Refusal to be committed to Gaol. Proof must be by two Witnesses, on Conviction at Quarter-Sessions, shall forfeit 100*l.* to be divided between the Poor of, &c. and Informer. Note; before officiating, must take the Oaths, &c. and present at Quarter-Sessions Letters of Orders from the Hands of some Protestant Bishop, which must be entered on Record by the Register or Clerk, whose Fee is 1*s.* And if any Magistrate having, or pretending to have any Authority in Scotland, shall forbid or hinder their Meeting, or Assembling within their Jurisdiction, or cause the Doors of their House to be shut up, such Magistrate, &c. shall on Conviction as before, forfeit 100*l.* to be disposed of as before. Note; The Act against irregular Baptisms and Marriages, and by Episcopal Ministers, repealed. 10 *Ann. c. 7.*

## Escape.

Escape what, 'tis either negligent, or voluntary.

**E**scape from the *French* word *Eschapper*, and signifies in the Law, a Flying from, or being at Liberty from some lawful Restraint, without being delivered by due Course of Law; and 'tis either negligent or voluntary; but in Offences below Treason or Felony, there is no Difference, whether the same be voluntary or not; for in both Cases the Officer is only fineable.

To suffer a Felon wilfully to Escape is Felony, but a negligent Escape is only fineable. 1 *El. 2. Lamb. 440.* Negligent Escape after Attaint, Fine is 100*l.* after an Indictment only is 5*l.* and so in all other Cases at Discretion; but there must be a legal Commitment to warrant it. *Dalt. 380.*

By Stat. 3 *H. 7.* and 1 *R. 3. c. 3.* Justices of Peace have Power in Sessions to enquire of Escapes of Felons.

If a Stranger takes a Felon, and delivereth him to another, who suffereth him to go at large, 'tis an Escape in both, for the first Man ought to have delivered him to the Constable

Constable, and to no other. But if a Man receive a Felon, and suffers him to go away before Apprehension, this is no Escape, tho' he knows him to be a Felon, because he never was arrested, but then he shall be deemed an Accessary.

9 H. 4. Cro. 39.

If a Gaoler permit a Prisoner to go at large, tho' he returns, yet 'tis an Escape, and fineable, for he ought to keep his Prisoner in Custody; but if after a negligent Escape, and before the Gaoler can be punished, he shall take the Prisoner upon fresh Suit, he shall be excused. 3 Rep. Ridgway's Case.

Gaolers suffering Prisoner to go at large how punished.

To Bail one not bailable by Law, *pro defectu scientiæ*, is a negligent Escape.

If the Gaoler prove insufficient, the Sheriff must answer for Escapes in civil Actions; but where the Offence is criminal, 'tis otherwise.

Sheriff answerable in civil Causes where Gaoler is insufficient.

To make the Escape Felony, first the Crime, for which the Prisoner was committed, must be Felony at the Time of the Escape, or otherwise it is but fineable. And secondly, there must be a legal Commitment.

Where the Escape is Felony.

After a Pardon for Murder, but pending an Appeal the Gaoler suffered the Prisoner to escape, 'tis Felony in the Gaoler. *Plowd. 476. B.*

The Crime is equal in a Justice of Peace, for taking a Felon out of Gaol without Bail or suffering him to go at large without Bail or Commitment, where the Offender confesses the Felony before him. 'Tis Felony likewise in a Constable to suffer a Felon to destroy himself.

Where the Justice is answerable.

And if one is put in the Stocks on Suspicion of Felony, and another lets him go, this hath been held to be Felony at common Law, altho' the Party was never indicted. *Dyer 99.*

*Dyer 99. pl. 68.*

A Man was wounded, and the Offender taken by a Constable who suffered him to escape, the wounded Man dies within a Year and a Day, 'tis only fineable. 3 *Leo. 207.* And where a Man is apprehended for Manslaughter, *per infortunium*, or *se defendendo*, and suffer'd to escape, 'tis not Felony in the Officer, but fineable only.

Where a Murder is committed in a Town not walled, the Town shall be amerced if the Murderer escape, if it be in the Day-time, tho' done in the Town-field or a Lane; but in the Night, 'tis otherwise, as if a Man wound another in the Day-time, and he die in the Night following, the Town shall not be charged, for it was not Felony before the Man died. 1 *Leo. 137.* 1 *Cro. 40.*

Where a Town is to be amerced.

All Escapes must be presented before the Offender shall be obliged to answer.

The



The Hundred must answer for a Man slain out of the Town, and for Insufficiency the County shall be charged. *Dalt.* 403.

If a Felon escape after Condemnation, and is re-taken, upon Confession or Proof, that he is the same Person, he shall be executed. *Poph.* 131.

If a Man arrest another for Treason, and after letteth him go at Liberty, this is a wilful Escape, and shall be adjudged Treason. *Dalt.* 377.

If any Person arrested for Felony, or Suspicion thereof, be put in the Stocks, or in the Possession of him who arrested him, if he make his Escape, this is Breaking Prison, and Felony in the Offender. *Dalt.* 378.

A Prisoner  
rescued at the  
Gallows.

If a Prisoner be rescued at the Gallows, or going to Execution, this is Breaking of Prison within the Statute *De frangentibus prisonam*, made 1 *Ed.* 2. & 1 *H.* 7. c. 6. and is Felony.

Sheriffs shall  
have the Keep-  
ing of the  
Gaol, and Mak-  
ing the Gaol-  
er.

*N. B.* The Sheriff of every County shall have the Keeping of, and shall be chargeable, and charged with the common Gaol and Prison of the same County, and with all the Prisoners therein, and must put in such Gaolers or Keepers, for whom they will answer, as appears by the Stat. 14 *Ed.* 3. and 19 *H.* 7. c. 10.

If the Sheriff arrests one for Felony, and he returns a *Cepi Corpus*, and hath not the Body at the Day, this is an Escape. 40 *Ed.* 3. *Lib. Affix.* pl. 42.

If one be murdered in a Town in the Day-time, and the Murderer escape, though in the Night, this is an Escape in the Town. 3 *Ed.* 3. *Fitz. Abr.* N° 292, and N° 302.

*Vide Stat.* 1 and 5 *Ann.* for Escape-Warrants in Civil Actions.

What necessa-  
ry to set forth  
in Indictments  
for Escapes.

In Indictments for voluntary Escapes for Felony, it is necessary to set forth where the Party was taken; because upon Not guilty pleaded to it, the *Venue* must come from the Place where the Offender was taken, as well as from the Place where he escaped. *Cro. Eliz.* 203.

It is necessary likewise to shew for what Felony he was committed, because the Officer may traverse it, and when it was committed. *Cro. Eliz.* 752.

An Indictment against a Constable for the Escape of a Felon committed to him.

Effex, ff. **T**HE Jurors, &c. do present, That whereas B. T. late of M. in the County of Y. Taylor, on the Tenth Day of June, in the Eighth Year of the Reign of our Sovereign Lord George the Second, by the Grace of GOD, King of Great Britain, &c. at M. aforesaid, in the said County, was taken and arrested for the Suspicion of Felony by him committed, (that is to say) for stealing Five Pounds in current Monies of the Goods and Chattels of one C. P. of M. aforesaid, in the said County; and the said B. T. on the Day in the Year, and at the Place aforesaid, was for the same Felony committed to D. A. of N. in the said County, Yeoman, being then Constable of the Will of N. aforesaid, by the Warrant of one R. B. one of the Justices of Peace of our said Sovereign Lord the King, to which said D. A. it was by the said Warrant commanded safely to keep the said B. T. and to convey or carry, and then and there to deliver him to the Gaol or Prison of our said Sovereign Lord the King, at M. in the said County, and then and there to deliver him to the Keeper of the Gaol or Prison aforesaid, safely and securely to be detained, until he should be in a lawful Manner discharged. Nevertheless the said D. A. and one E. F. late of M. in the said County, Labourer, on the Twentieth Day of June, in the Eighth Year aforesaid, at M. aforesaid in the said County, voluntarily and feloniously permitted the said B. T. being thus in Custody of the said D. A. for the Felony aforesaid, to escape and go at large, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

### Etreats.

**T**HESE are the Extracts of Fines, Forfeitures and Etreats what. Amercements taken out of the Rolls of the Clerk of the Peace, of which he makes two Parts, and delivers one to the Sheriff, and the other to the Barons of the Exchequer.

The

Estreats not to be levied on wrong Persons.

The Sheriff levying the King's Debt, without shewing the Party the Estreats under the Seal of the Exchequer, must be fin'd, and pay treble Damages to the Party. *42 Ed. 3. c. 39. 7 H. 4. c. 3. Lamb. 432.*

Issues estreated shall not be levied upon any other Person than upon him, who by the Estreat ought of Right to be charged, upon Pain that every Clerk writing such Estreat, and causing is to be executed, and the Officer shall forfeit five Marks to the King, and as much to the Party aggrieved, to be recover'd by Action of Debt, &c. *27 Eliz. c. 7.*

The Clerk of the Peace shall within Twenty-four Days after the Twenty-ninth of *September*, yearly deliver to the Sheriff an Estreat of all Fines, &c. and shall also on or before every second *Monday*, after the Morrow of *All Souls*, deliver into the Exchequer a perfect Schedule of such Estreats, upon Pain of 50*l.* to the Queen, and to the Informer, *22 & 23 Car. 2. c. 22. made perpetual per 4 & 5 W. & M. c. 24.*

No Justice or Clerk of the Peace shall spare, &c. any Indictment, &c. upon Pain to forfeit the treble Value. *42 Ed. 3. c. 9. 7 H. 4. c. 3.*

The Estreat must mention for what Offence the Fine was imposed. *Lane 55.*

Estreats must mention Quality of the Offence for which the Fine was imposed.

An Estreat of diverse Fines upon several Indictments at the Quarter Sessions, for several Riots, was sent into the Exchequer, and the Estreat mention'd not for what Offences the Fines were imposed, and the Records of the Indictments were remov'd into the Crown-Office by *Cartorari*. Chief Baron *Tanfield* said, the Estreat was insufficient, and no Process ought to be sent out upon them; because they do not mention the Quality of the Offence, for which the Fines were imposed. *Trin. 7 Ja. 1. Lane's Rep. 55.*

## Evidence.

Witnesses must be bound over to give Evidence.

THE Witnesses in Case of Felony, &c. must be bound in a Recognisance to appear, and give Evidence at the next general Gaol-delivery, and if they refuse, they may be committed or bound to the Good Behaviour. *2 & 3 Ph. & M. c. 10.*

One was committed by the Court of Quarter-Sessions for refusing to be sworn, and give Evidence to the Grand Jury



Jury on an Indictment for Treason; it is a great Contempt of the Court; but the safest Way had been to fine him, and then to have committed him until he had paid the Fine.

In my Lord *Audley's* Case, the Wife being the Party Wife cannot  
grieved was admitted as Evidence against her Husband; be a Witness  
and then a Distinction was taken between the Case of a for, or against  
common Person between Party and Party, and the Case her Husband,  
between the King and the Party, upon an Indictment; in nor a Husband  
the first of which it was said, she might not be a Wit- for or against  
ness, but in the last she might. But my Lord *Hale* was his Wife.  
of another Opinion, *viz.* That in Felonies, neither the  
Wife, nor her Examination shall be used for or against  
her Husband; and that Distinction in my Lord *Audley's*  
Case hath since been often denied to be Law, and so the  
Law stands at this Day. *Raym.*

In *Mary Grigg's* Case the Court would not admit the  
first Husband as a Witness to prove the first Marriage  
against a Woman marrying a second Husband, and de-  
clared, that a Wife could not be admitted to give Evi-  
dence against her Husband, nor a Husband against his  
Wife, in any Case except Treason.

But yet a Wife *de facto*, as an Heiress taken away,  
and by Threats prevail'd on to marry the Man, shall be  
a good Witness against him; and if convicted upon her  
Evidence, he shall be hanged. 1 *Vent.* 143. And an In-  
fant may be a Witness for, or against his Parents.

One convicted of Perjury, though pardon'd, or of For- Convicted of  
gery or Conspiracy, is not to be a Witness, yet the Ju- Perjury, &c.  
stice may bind such Witnesses to give Evidence, but then cannot be a  
he is to inform the Judge of their Credit. Yet one con- Witness.  
victed of Felony, and pardon'd, is a Witness, for the  
Pardon takes away both *pœnam* and *reatum*. *Godb.* 288.  
*Raym.* 369. 1 *Vent.* 349. So likewise if burnt in the  
Hand. *Style* 388. But in Cases of Perjury or Forgery,  
regularly, the Party whose Interest is defeated or preju-  
diced by the Deed, is no Evidence to prove the Fact.

But a Person burnt in the Hand Guilty of Felony, and  
pardon'd, may be an Evidence in Civil as well as Crimi-  
nal Cases. *Black.* 111. *Kel.* 37. *Godb.* 228. *Raym.*  
369. 1 *Vent.* 349. *Style* 388.

One convicted for publishing Libels, and another for  
singing a Ballad against the Government, were put in  
the Pillory, and afterwards were Witnesses to a Will;  
and upon an Appeal to the Delegates, they were allow'd  
to be good Witnesses. because the Infamy arises from the  
Nature of the Crime, and not from the Punishment; but  
in this Case, neither of the Offences are infamous, either  
by

One confessing  
the Felony may  
be a Witness.

by the Canon or Civil Law, (and by those Laws they were then to judge) though it is otherwise by the Common Law. *Lev. 3. part 426.*

But our Law does not allow a Person duly set in the Pillory to be a Witness. *H. P. C. 263.*

Where a Felon confesseth the Fact, he may give Evidence against another, and the accused may make his Defence by Witnesses upon Oath, and have the same Process to compel them to appear as is usually granted to the Accuser for Witnesses against him. *Dalt. 408.*

And if a Witness is not able to travel, the Justice may excuse his personal Appearance; and certify his Examination at the next Assises. *Ibid.*

Depositions before a Justice of Peace, no Evidence, tho' the Witness was dead.

In an Information for a Libel against the Government, the Attorney General offered in Evidence some Depositions taken before a Justice of Peace concerning the Fact, the Witness being dead; but it was not allow'd by the Court, because such Depositions may be used only in Evidence in Cases of Felony, by the Stat. 1 & 2 P. & M. c. 13. and therefore shall not be extended any further.

In Cases of Treason, the King's Counsel may manage the Evidence for the King, before the Grand Jury, in order to the finding the Bill, because the King's Counsel are the only Prosecutors in his Cases.

Feme Covert  
or Infant cannot  
be bound  
over.

A Feme Covert, or Infant, being a Witness, cannot be bound in a Recognisance, to appear at Sessions, and if the Feme be bound with her Husband, it is void as to her; but they may be bound by Sureties, and on Refusal may be committed. *11 Rep. 52.*

Every Person produced as a Witness on the Behalf of a Prisoner upon Trial for Treason or Felony, must be upon Oath to speak the Truth, the whole Truth, and nothing but the Truth; and if convicted of wilful Perjury, shall suffer such Punishment as by the Law may be inflicted on such an Offender. *1 Ann. c. 9.*

In Treason  
must be two  
Witnesses to  
each Act of  
Treason.

In Treason working Corruption of Blood, or in Imprison of such Treason, the Party accused is not permitted to have a Note of the Witnesses Names against him; but they must be two lawful Persons, and both to the same Overt Act, or two Acts of the same Treason; so that if two or more Treasons are alledged in one Indictment, one Witness to one, and another to the other, they shall not be accounted two Witnesses; and no Evidence shall be admitted to an Overt-Act which is not expressly laid in the Indictment. *7 & 8 W. 3. c. 3.*

A Juror may  
be an Evidence.

A Juror may be an Evidence on Request of either Party, but then he must be examin'd upon Oath in open Court.

Court, and not by the rest of the Jurors in private. *Style*

*Rep. 233.*

No Quaker is to give Evidence in any criminal Cause, Quakers cannot be Witnesses in criminal Causes. *8 W. 3. c. 34.* but a Person burnt in the Hand will be admitted to give Evidence, as well in Criminal as in Civil Causes. *Kel. 37.*

Evidence { Maintaining  
or  
Not Maintaining } the Indictment.

Indictment of a Felony, 30 *Novemb.* and the Evidence is of another Day; the Jury may find the true Day, and the Forfeiture shall relate to it. Forfeiture relates to the Day found by the Jury.

If the Felony is laid to be committed at such a Place, and the Evidence proves the Fact at another Place in the same County, it is well enough.

On an Indictment for High Treason, Evidence may be given of the Fact at any Time before, or after the Time laid in the Indictment; but it must not be after the Indictment found; neither is the Evidence restrained to the Place, so it be in the same County; and so it is in all criminal Cases. Evidence not restrained to the Place, so it be in the same County.

If one is indicted for poisoning with one Kind of Poison, and the Evidence is of another, or for killing with one Weapon, and the Evidence is of another, the Indictment is maintained; for it agrees in Substance. One concerned by Consequence in Interest is not to be allowed good Evidence against one as a Cheat.

Or that *J.* gave the Wound, and that *R.* and *S.* were betting, and the Evidence that *B.* gave the Wound, and that *R.* and *S.* were present with another, and betting, &c. it is sufficient.

So also an Indictment for Murder *ex militia præcogitata*, the Evidence is of Malice implied, as killing an Officer in Execution of Justice, &c. maintains the Indictment.

But if the Indictment and Evidence differ in the Manner of the Death; as if it be for poisoning, and the Evidence is of Stabbing; that will not maintain the Indictment. If Evidence differ from Indictment not good.

But no Man is to be condemned without an Accuser.

*Dalt. 409.*

It is proper that the Parties injured be bound by the Justice not only to appear, and give Evidence; but also to prefer a Bill of Indictment against the Prisoner; and the other Persons, who can inform any material Thing to prove the Felony, may be bound to give Evidence only. Prosecutor bound to prefer Bill, as well as to give Evidence.

*Dalt. 409.*

*Per*



*Per Cur:* In Cases of Felony, Depositions before a Justice of Peace, if the Deponent die, may be used in Evidence, by the Stat. 1 & 2 P. & M. c. 13. but in no other Case. 1 Salk. 281. *The King versus Pain, Hill. 7 W. 3. B. R.*

Where there is Cause of Action against J. S. only, and the Action is brought against divers others against whom there is no Cause of Action; and that is by Covin only, to take away their Evidence, if this appears upon the Evidence, the Justices may and ought to receive their Testimony; and so it was done in the Exchequer against one *Dimck* and others. *Mich. 24 & 25 Eliz. Savil's Rep. 34. pl. 81.*

Where a Hundredor may be a Witness.

Where the Issue was, Whether the Place where a Man was robbed be within the Hundred of *W.* it was resolved, that if one has Lands, but doth not inhabit in the said Hundred, but hath let them, he may be a Witness; but a Man who inhabits there, although he pay no Taxes, shall not be a Witness, because he is compellable to Watch and Ward. *Mich. 1657. 2 Sid. 2. Oliver versus Hund. of Wallington in Surrey.*

Where a Woman taken away is a good Witness.

*J. B.* was indicted upon the Statute 3 H. 7. c. 2. for the forcible taking away and marrying one *Lucy Ramsey* of the Age of Fourteen Years, and having 5000*l.* Portion. The Court *seriatim* delivered their Opinions, that she was a good Witness; 1st, for that there was one continuing Force upon her from the Beginning until the Marriage, and therefore whatever was done during that Violence, was not to be respected. 2dly, As such Cases are generally contrived, if the Woman though married could not be a Witness, the Criminal would go unpunish'd, and he was found Guilty, and hanged. *Trin 25 Car. 2. B. R. 1 Vent. 243. John Brown's Case.*

In a Trial about repairing Highways, no Person can be a Witness who is chargeable to the repairing of the Way; but those who are not chargeable, are good Evidence. *Hill 14 & 15 Car. 2. 1 Keb. 435. pl. 23. Rex versus Inhabitants of Somersham.*

A Person burnt in the Hand will be admitted to give Evidence as well in Criminal as in Civil Causes; adjudged by Justice *Hyde. Kel. 37.* for Clergy is a Statute Pardon. By Stat. 1 Ann. c. 18. In all Informations and Indictments concerning the Repair of Bridges, the Inhabitants of the Place where, &c. shall be received as Witnesses.

## A Warrant to summon a Witness concerning a Felon.

Sheweth, *ff.* **W** Hereas I have been informed that S. C. of, &c. was lately robbed at, &c. and that D. P. of, &c. is a material Witness to prove by whom the said Robbery was committed: These are therefore to require you to cause the said D. P. forthwith to come before me, or some other Justice of the Peace for this County, to give such Information and Evidence as he knoweth, concerning the said Offence, that such further Proceedings may be had therein, as to Justice doth appertain. Given, &c.

## Condition of a Recognisance for Evidence to appear against a Felon at the Assises.

**T**HE Condition of this Recognisance is such, That if <sup>2 & 3 P. & M.</sup> the above bound D. P. shall personally appear at the next Assises or Gaol-Delivery, (or at the next General Quarter-Sessions of the Peace to be held at, &c. &c.) and then and there give such Evidence as he can against P. C. of, &c. concerning his felonious Stealing of one Silver Tankard, &c. out of the House of S. C. on, &c. last past, and do not depart thence without leave of the Court, that then, &c. or else, &c.

X

Examined

## Examination.

What a Justice must do when a Felon is brought before him.

**W**HEN any Person is brought before a Justice of Peace for Felony, or Suspicion thereof, before such Justice commit him to Prison, he must first take the Examination of the Offender; and also, 2dly, the Information of such as bring him; and so much as is material to prove the Felony, he shall put in Writing within two Days after such Examination; 3dly, he must bind the Witnesses by Recognizance to appear at then ext Gaol Delivery to give Evidence, &c. 4thly, he must make his *Mittimus* to send him to Gaol, unless he be bailable and then two Justices, (*Quorum unus*) may bail him. 5thly, the said Justice must certify at the next Gaol-Delivery, such Examination, Information, Recognizance, and Bailment, or else the Justice may be fined by the Judge of Assize. 1 *E* 2 *P*. *E* *M. c.* 13. 2 *E* 3 *P*. *M. cap.* 10.

In small Felonies Examination must be sent to the Quarter-Sessions.

But for Petty Larcenies, and small Felonies, the Examinations and Informations may be certified to, and the offenders bound over to the Quarter-Sessions where such Offenders may be tried.

The Justice must examine the Witnesses upon Oath and they must examine the Felon likewise, but not on Oath, for no Man is obliged to accuse himself. *H. P. C.* 191.

And these Informations may be given in Evidence at the Trial, though the Party is dead, but then either the Justice or his Clerk must be sworn to the Examination. *Lord Morley's Case.*

Offender's Confession given in Evidence, if signed.

If a Felon confesseth the Fact upon Examination, the Justice must make him subscribe his Name or Mark at the end of his Examination and Confession; and such Confession may be given in Evidence when proved upon Oath, by the Justice or his Clerk.

Justice can't detain above 3 Days under Examination.

A Justice of Peace may not detain in Prison a Person suspected only, but during a convenient Time to examine him, which the Law allows to be three Days. *Cro. Eliz.* 829. *Hill.* 43 *Eliz.* *Rot.* 1831. in *C. B. C.* *Eliz.* 239, 830. *pl.* 35.

A Wife may not be examined or bound to give Evidence against her Husband, 6 *Co.* But Children may be examined against their Parents, and give Evidence at the Trial. *Dalt.* 408.

Examinations taken on Oath by Justices of Peace in one County, may be by them certified in another County.



ty, and there read and given in Evidence against the Prisoner. *Dalt.* 544.

## The Examination of a Felon.

The Examination of *P. C.* of, &c. taken before me <sup>2 & 3 P. & M.</sup>  
*W. K. Esq;* one of His Majesty's Justices of the Peace for the said County, this Day, &c. <sup>cap. 10.</sup>

**T**HE said *P. C.* being charged before me by *S. C.* of, &c. with the felonious stealing out of the House of the said *S. C.* in, &c. several Goods, viz. &c. to the Value of, &c. on, &c. last past, he the said *P. C.* upon his Examination now taken by me, denieth that he stole the said Goods, or ever had them in his Possession, or confesseth that he stole the said Goods and sold them to, &c. for, &c. and further saith not.

These Examinations are to be taken before any Offender shall be committed.

The Informations of the Witnesses must be taken severally, and upon Oath, thus :

The Examination of *P. C.* of, &c. taken upon <sup>2 & 3 P. & M.</sup>  
Oath before me *W. K. Esq;* one of His Majesty's Justices of the Peace for the County aforesaid, the Day, &c. <sup>cap. 10.</sup>

**T**HIS Examinant saith, that on, &c. last past, he saw *P. C.* of, &c. enter the House of *S. C.* and there feloniously steal one Silver Tankard marked, &c. and also, &c. belonging to the said *S. C.* and that this Examinant being at that Time a Servant to the said *S. C.* endeavoured to apprehend the said *S. C.* but there being no other Person in the House belonging to the aforesaid *S. C.* the said *P. C.* very much beat and wounded this Examinant, and left him bound on the Floor whilst he made his Escape with the Plate and Goods aforesaid: And this Examinant further saith not.

## Excise.

**I**F Officer have Cause to suspect Coffee, &c. to be fraudulently concealed in any Part of Great Britain, except within the Bills of Mortality, on Oath before a Justice of Peace, setting forth the Ground of his Suspicion, he may by special Warrant empower him by Day or by Night; but if in Night-time with a Constable, to enter all suspected Places, and seize and carry away all such Coffee, &c. as forfeited, with all Baggs, &c. and if any Person obstruct the Officer in Entering or Seizing, he forfeits 100*l.* 10 *Geo. 1. cap. 10.*

A Justice of Peace may administer the Oath to a Coffee Officer, and must give a Certificate *gratis*.

See more of Excise, Tit. Brewer, &c.

## Execution. See Judgments.

**I**F Execution is respited by the Judge for five Weeks, and the Time expires, and then the Sessions is adjourned, and the Judge grants a further Reprieve, 'tis good; tho' by the Adjournment the Commission of Gaol-Delivery is determined. *Dyer 205.*

## Extortion.

What is Extortion.

**I**S an Offence where an Officer by Colour of his Office takes Money, or any other Thing of Value not due, or more than is due, or before 'tis due; and in a large Sense where any Person is oppressed by an extorting Power, or under a false Pretence of Right.

An Arch-deacon is guilty of this Offence, taking more than his Fees by Colour of his Office, or any Fee or Reward for Expedition, or exacting an Oath, or any other undue Thing.

Baili

Bailiff to a Sheriff was indicted at Sessions for taking One can't be  
20s. of *J. S. extorsive colore officii*, and was committed, indicted, and  
and pleaded, and was the same Day in Sessions tried and tried the same  
convicted, and on a Writ of Error Judgment was reversed, Sessions.  
because a Man can't be indicted and tried the same Sessions.  
*Cro. Car. 4, 3, 8. Jones 379, 380.* but the Damages  
are to be recovered by Action.

By Stat. 23 *H. 6. c. 10.* Any taking more than 4*d.*  
for an Arrest, forfeits treble Damages to the Party grieved,  
and also 40*l.* between King and Prosecutor ; but the Jury  
must find in the single Damages, and then the Justices  
may treble them. *Sid. 91. vid. Stat.*

A Coroner taking more than his Fees, or refusing to  
view the Body before he had 6*s.* 8*d.* for himself, and 2*s.*  
for his Clerk, he was committed, &c. 3 *Inst. 149.*

A Gaoler taking more than his Fees is guilty of Ex-  
tortion.

A Justice of Peace convicted of Extortion was fined A Justice of  
1000 Marks, committed during the King's Pleasure, bound Peace convict-  
to his good Behaviour for a Year, and ordered to acknow- ed of Extor-  
ledge his Offence publicly at the next Assizes, and turned on, fined 1000  
out of Commission. Marks.

'Tis Extortion in the Ordinary to take any Thing for  
a Probate of a Will or Administration, where the Goods  
of the Deceased exceed not the Value of 5*l.* save only 6*d.*  
for the Register.

Or to take more than 2*s.* 6*d.* where the Goods ex-  
ceed 5*l.* but not 40*l.* and the Register 12*d.* or the  
Register may refuse the 2*s.* 6*d.* and take a Penny for  
every ten Lines of the Will, each Line containing ten  
Lines in Length.

Or any thing for a Mortuary where 'tis not payable by  
Custom. 21 *H. 8. c. 5.*

A Sheriff taking more than his Fees, or any Thing of  
a Constable for bringing a Felon to Gaol, is guilty of Ex-  
tortion. Extortion in the Spiritual Court is punishable at  
Common Law. *Palm. 318.*

No Sheriff, Bailiff, &c. shall carry any Person in  
his Custody to any Tavern, Alehouse, &c. so as to  
put him to any Charge more than what he shall wil-  
lingly call for, and freely give ; nor take any more than  
reasonable for his Lodgings and Expences. 22 & 23  
*Car. 2. c. 20.*

Extortion is an Offence at Common Law punishable  
by Fine and Imprisonment.

And where any Officer at Common Law, or in the Ec-  
clesiastical Court shall take any other, or more Fees than  
that are allowed by Statute or lawful Usage, he may  
be



## Extortion.

be punished at the Sessions by Indictment, by the Justices without any special Commission. See 21 H. 8. c. 5. 23 H. 8. c. 5, 6, 9. 22 & 23 Car. 2. c. 23. What Fees are allowed to Ordinaries, &c. for Probate of Wills, and granting Administrations. See 4 Inst. 336.

'Tis Extortion to take one Penny from the Party arrested.

Any Thing taken *colore Officii* is Extortion, but *virtute Officii* is allowable. Cro. 57.

If the Gaoler takes any Thing of one in Prison, to let him have Liberty, Ease, or Favour, it is Extortion. Cro. 59. a.

Justices of Peace usually take for Recognizance of the Peace. } l. s. d. 0 2 0

For Recognizance to Bail a Prisoner ————— } 0 2 0

For a Superedeas of the Peace ————— } 0 2 0

Warrant of the Peace ————— } 0 2 0

Release of the Peace ————— } 0 2 0

Warrant ————— } 0 0 4

For each Rioter recorded and fined at his Discharge ————— } 0 1 0

Recognizance of an Alehouse Keeper ————— } 0 1 0

Sealing Bushels and other Measures ————— } 0 0 4

Sealing an Hundred Weight, and proportionably. ————— } 0 0 4

The Fees in Sessions vary according to the Custom of the Place.

Mayors take for

And if he takes more for sealing it a gain, forfeits 40s. between the King and Party grieved, which Default Justices of the Peace have Power to hear and determine. 7 H. 7. c. 3.

By 11 H. 7. c. 4. two Justices (*Quorum unus*) may hear and determine the Defaults of Mayors, &c.

Keeper of a Pound.

Taking above 4d. for pounding a Distress, forfeits 5l. to the Party grieved. 1 & 2 P. & M. c. 12.

Sheriff taking more than 12d. for every 20s. of the yearly Value of the Lands not exceeding 100l. per Annum and 6d. if above, for executing an *habere facias possessionem aut seisinam*, or taking Poundage for executing a *Ca' Sa'* or charging one in Execution for a greater Sum than really due to the Plaintiff, and being convicted thereof, shall be guilty of Extortion, and shall forfeit

Forfeit treble Damages to the Party grieved, and double the Sum extorted, and 200*l.* more; one Moiety to the King, the other to the Prosecutor. See Sheriff.

The Toll-gatherer is to take but 1*d.* for one Contract, and setting down the Names of the Parties thereunto and for a Note of Entry.

Liberties have been seized for detaining Prisoners after the Fees paid. 9 Co. 96.

Fees of Wine Licenses are for the License 5*s.* for the Acquittance 4*d.* for the Bond 6*d.* on Pain of 10*l.* 112 Car. 2. c. 25.

### Indictment against a Coroner for taking excessive Fees.

Effex, ff. **T**HE Jurors, &c. do present, That A. B. of M. in the County aforesaid, Gent. on the 30th Day of December, in the eighth Year of the Reign of our Sovereign Lord the King, then being a Coroner of our said Sovereign Lord the King, in and for the said County, at M. aforesaid, in the County aforesaid, by colour of his Office aforesaid, extorsively took of one C. D. in the said County, Gent. for his Fee 30*s.* in and for the Execution of his Office of Coroner aforesaid, upon a View of the Body of T. B. of M. aforesaid, which said T. B. on the 20th Day of December aforesaid, at M. aforesaid, was by a certain Cart which ran in and upon his Body unfortunately kill'd, to the great Contempt of our said Sovereign Lord the King, against the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

### Indictment for Extortien in a Gaoler.

Effex, ff. **T**HE Jurors, &c. do present, That A. B. of the Parish of M. in the County aforesaid, was taken by J. Constable of the same Parish, by virtue of a certain Warrant under the Hand and Seal of C. R. then and now one of the Justices of our said Sovereign Lord the King, sign'd to keep the Peace in and for the said County, and directed to the said J. S. on the 30th Day of December, in the eighth Year of the Reign of his said present Majesty, for the Suspicion of a certain Felony to have been committed by the said A. B. and was by him the said C. R. the same Day, Year and Place committed to G. C. Keeper of the said Gaol of our said Sovereign Lord the King, of the County aforesaid,

*said, under the Custody of the said G. C. to be safely kept for the Suspicion aforesaid, and the said A. B. was detained in that Prison, under the Custody of the said G. C. from the said Time he was committed to the Prison aforesaid, for the Space of one Month then next ensuing : Nevertheless, the said G. C. not considering the Statute in that behalf made and published, and little regarding the Penalty therein contained (such a Day and Year) at M. aforesaid, received of the said A. B. for Ease and Favour had in the Gaol aforesaid, during that Time, ten Pounds of lawful Money of Great Britain, in Contempt of our said Sovereign Lord the King, against the Form of the Statute, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.*

**Indictment against a Bailiff of a Hundred for taking Fees to excuse a Freeholder from appearing at the Assizes or Sessions.**

Staff. ff. **T**HE Jurors, &c. do present, That J. T. late of L. in the County of S. Yeoman, being a Bailiff of the Hundred of H. in the County aforesaid, on the seventh Day of May, in the eighth Year of the Reign of our Sovereign Lord the King, at L. in the County aforesaid, by means and Colour of his Office aforesaid, unjustly and extorsively took and extorted from one T. K. one of the Freeholders in and for the County aforesaid, 5 s. to excuse the Attendance or Appearance of the said T. K. at the Time of the Assizes then next to be held in and for the said County whereas in Fact, the said T. K. was not returned in any Panel of Jurymen by the Sheriff of the County aforesaid. And also, whereas in Fact, no such Sum of Money was due to the said T. K. for a Fee for excusing the Attendance or Appearance of the said T. K. at the Assizes aforesaid, to the pernicious Example of other Malefactors, to the great Damage of the said T. K. and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.



## Fairs.

**O**Wner of a Fair or Market, not appointing a Toll-Taker, (where Toll is paid) or a Book-keeper to sit there from ten a Clock in the Forenoon till Sunset, shall forfeit 40 s. The Toll-Taker or Book-Keeper, not delivering in one Day after the Fair, &c. unto the Owner, a Note of all the Horses, &c. sold there, forfeits as before, to be divided between King and Prosecutor. Justices at Quarter-Sessions may hear and determine Offences aforesaid. 2 & 3 P. & M. c. 7.

He who keeps a Fair or Market in a Church-yard shall be fined. 13 Ed. 1. c. 6.

Fairs and Markets are not to be kept on a Sunday. 27 H. 6. c. 5.

And the Lord of a Fair kept on a Sunday may be indicted at the Assises or Sessions. 27 H. 6. c. 5.

A Court of Piepowders by Law is incident to every Fair for Contracts and Batteries. 3 Cro. 168.

No Person shall keep a Fair longer than he ought to do, on Pain of having it seiz'd into the King's Hand. 2 Ed. 3. c. 15.

## False Tokens.

**A**NY falsely and deceitfully getting into his Possession Money or Goods of other Mens, by colour of false Tokens, or counterfeit Letters, and convicted thereof at the Quarter-Sessions, by Examination of Witnesses, shall suffer any corporal Punishment, except Death. 33 H. 8. c. 1. Cro. 83. a. 130. b.

The Punishment of getting Money, &c. by false Tokens.

Two Justices of Peace (*Quorum unus*) may bind over to the next Assises or Sessions any such suspected Persons, or may imprison or bail them until the next general Sessions.

One Justice of Peace may bind Cheats to their good Behaviour, so to Assises or Sessions, or send them to the

## False Tokens.

the House of Correction, especially by Order of Sessions. *Dalt.* 63.

Counterfeiting a Pass punish'd by Pillory and Fine. *Dalt.* 62.

A Receipt by a bare Lie without a false Token not indictable. *Blac.* 79.

One indicted and fined for counterfeiting a Protection, though in the Name of one who had no Power to grant it. *1 Sid.* 142.

He who shall personate any Seaman, Soldier, Artificer or Labourer, in the Presence of his Majesty's Commissioners, or Officers, Paymaster or Cashier, in order to receive any Money due from the King, the principal Officer and Commissioners may arrest such Person, and imprison him till he shall find Bail to appear at next Assises or Sessions, and being there convicted shall forfeit double the Value he would have gained, to the Governors of the Chest at *Chatham*, for the Use of the poor maimed Soldiers, and be imprison'd for a Time, not exceeding one Year, at the Discretion of the Court. *22 & 23 Car. 2. c. 23.*

He who shall counterfeit the Hands of the Treasurer, Comptroller, Surveyor, Clerk of the Accounts, or Commissioners of the Navy, or of the Signing or Vouching Officers of his Majesty's Navy, Ships or Yards, to any Bill, Ticket or Paper, or shall knowingly produce such Counterfeit Ticket, Bill or Paper, the Commissioners and Officers of the Navy may commit him to Prison, until he shall find Bail to appear at the next Assise or Sessions, there to be proceeded with according to Law. *22 & 23 Car. 2. c. 23.*

*L.* was indicted for cozening *M.* for that *L.* being a Soldier under *J. L.* pretending he had a Power to discharge Soldiers, took Money of *M.* to discharge him. *Latch p. 202. Trin. 3 Car. 1.*

What to be done with one who cheats at Play.

If a Man cheats and cozens at Play with Dice, the Person cheated may arrest him, and carry him before a Justice of Peace, who is to bind him over to the Sessions, and there he is to be tried and punished: And if he brings an Action, he who arrests him may justify, as all the Court held. *Mich. 7 Car. 1. Cro. Car. 234. Holiday ver. Oxenbridge.*

A Working Goldsmith was indicted for falsifying Plate, by putting too much Copper in it, and by Fraud getting and setting on it the old Essay-Marks, and then selling it for Standard, and for this the Goldsmith was fined 100 *l.* and put in the Pillory three Days, at three several Places, with a Paper in his Hat, declaring his Crime,

Crime, and was forejudged his Trade: And the Essay-Master was turn'd out of his Office, because he had not caused those old Marks to be broken, when the new Marks were made. *Kelyng 39. 16 Car. 2.*

*W.* was indicted at Sessions for getting the Horse of another Man into his Possession, by using another Man's Name, and a false Token; Exceptions were taken to this. 1. That the Indictment doth not say it was *contra formam Statuti*; but the Court held it need not, because it is an Offence at Common Law. 2. *Rol.* Chief Justice took this Exception, that the Indictment was, that the Defendant did the Fact *nuper*, and that is so general a Word, that no Answer can be given to it, and for that the Indictment was quash'd. *Mich. 24 Car. 1. Style 45. Rex ver. Wood.*

One was indicted on Stat. 33 *H. 8. c. 1.* for that he by a false Note in the Name of *J. S.* obtain'd into his Hands a Wedge of Silver of 200*l.* Value; and though the Indictment varied in several Words from the Statute, though not in any Point material; yet because there was not any Recital or Mis-recital of the Statute, but only by Way of Inducement, the Court resolv'd it to be good enough, and adjudged him to stand on the Pillory at two Places, to pay 500*l.* to be imprison'd during the King's Pleasure, and to be bound with good Sureties for his Good Behaviour. *Trin. 15 Car. 1. B. R. Cro. Car. 564. Terry's Case.*

In *Bainham's Case* there was an Indictment, for that *A.* borrow'd 5*l.* of the Defendant, and pawn'd Gold Rings to secure the Payment; and that at the Day, *A.* tendred the Money, but the Defendant refused to deliver up the Rings, and it was quash'd. 1 *Salk. 379. Dom. Regina ver. Jones. Trin. 2 Ann. B. R.*

**Fees.** See Extortion.

**Felo de se.** See Homicide.

**Felony,**



## Felony, Robbery, &amp;c.

Felonies are  $\left\{ \begin{array}{l} \text{by Common} \\ \text{or} \\ \text{by Statute} \end{array} \right\}$  Law.

## Felonies at Common Law are,

- 1<sup>st</sup>, Against the Life of a Man.  $\left\{ \begin{array}{l} \text{Homicide of all Sorts; but that} \\ \text{will come to be treated of} \\ \text{more properly under that Ti-} \\ \text{tle.} \end{array} \right\}$
- 2<sup>dly</sup>, Against the Goods.  $\left\{ \begin{array}{l} \text{Larceny.} \\ \text{Robbery.} \\ \text{Piracy.} \end{array} \right\}$
- 3<sup>dly</sup>, Against the Habitation.  $\left\{ \begin{array}{l} \text{Burglary.} \\ \text{Burning.} \end{array} \right\}$
- 4<sup>thly</sup>, Against public Justice.  $\left\{ \begin{array}{l} \text{Breach of Prison.} \end{array} \right\}$

## Felonies by Statute.

**T**HOUGH many of them are interspersed in this Treatise under their proper Heads, yet I will endeavour to collect them in a concise Manner in this Place, that the Reader may see all the Offences of this Nature, as it were at one View; and for Method's Sake they shall be ranged Alphabetically.

Apprentices.  $\left\{ \begin{array}{l} \text{Counterfeiting any Stamps on their In-} \\ \text{dentures is Felony, without Benefit of} \\ \text{Clergy. 8 Ann. c. 9.} \end{array} \right\}$

Arms.  $\left\{ \begin{array}{l} \text{Imbezilling the King's Arms, Munition,} \\ \text{&c. to the Value of 20s. is Felony,} \\ \text{but does not cause Corruption of Blood,} \\ \text{loseth Lands but during Life, the Wife} \\ \text{shall have Dower.} \end{array} \right\}$

The Prosecution must be in one Year.  
31 Eliz. c. 4. this cannot be determined in Sessions.

Bail.  $\left\{ \begin{array}{l} \text{To acknowledge Bail in the Name of} \\ \text{another Person who is not privy, or con-} \\ \text{senting to it, is Felony without Benefit} \\ \text{of Clergy. 21 Jac. I. c. 26. but if ta-} \\ \text{ken de bene esse at a Judge's Chamber,} \\ \text{and not filed, no Felony. Sid. 90.} \\ \text{Conceal-} \end{array} \right\}$

Bastardy.

Concealing the Death of a Bastard-Child, unless Proof be made by one Witness, that it was dead born. 21 *Ja. c.*  
27. No Clergy.

Marrying a second Husband or Wife, the first being living, is Felony. 1 *Ja. c. 11.*

1. But this doth not extend to a Person whose Husband or Wife is beyond Sea, or to such who shall absent from one another in *England*, for the Space of Seven Years, with this Difference, that if the Abode be beyond Sea, then though either of them have Notice that the other is living, such Notice is not material; but if in *England*, it is otherwise, for in such Case the Party is not exempted from the Penalty of the Statute.

Bigamy.

2. Nor does it extend to Persons divorced *a Mensa & Thoro, causa adulterii*, but not *causa servitiae*. *Mar. 101.*

3. Nor to such whose former Marriage is by any Sentence in the Ecclesiastical Court declar'd void.

4. Nor to those who have been married within the Age of Consent, who afterwards disagree to that Marriage.

If a Man marries a Woman beyond Sea, and is living, and his Wife marieth another Husband in *England*, this is not within this Statute, because the first Marriage cannot be tried here. *Sid.*

171.

Is an Offence against the Order of Nature committed between Persons of the same Sex, or with Beasts, and extends as well to Women, as to Men, and is made Felony without Clergy. 25 *H. 8. c. 6. 5 Eliz. c. 17.*

Biggery.

There must be *penetratio & emissio seminis*, for the one without the other will not make the Sin, and therefore the Indictment must be *quod carnaliter cognovit, &c.* My Lord Audly's Case is not held to be Law now.

*Agens & Patiens pari poena plectantur, viz. hanged*, unless the Party consenting

## Felony, Robbery, &amp;c.

Felonies are  $\left\{ \begin{array}{l} \text{by Common} \\ \text{or} \\ \text{by Statute} \end{array} \right\}$  Law.

## Felonies at Common Law are,

- 1st, Against the Life of a Man.  $\left\{ \begin{array}{l} \text{Homicide of all Sorts; but that} \\ \text{will come to be treated of} \\ \text{more properly under that Title.} \end{array} \right\}$
- 2dly, Against the Goods.  $\left\{ \begin{array}{l} \text{Larceny.} \\ \text{Robbery.} \\ \text{Piracy.} \end{array} \right\}$
- 3dly, Against the Habitation.  $\left\{ \begin{array}{l} \text{Burglary.} \\ \text{Burning.} \end{array} \right\}$
- 4thly, Against public Justice.  $\left\{ \begin{array}{l} \text{Breach of Prison.} \end{array} \right\}$

## Felonies by Statute.

**T**HO' many of them are interspersed in this Treatise under their proper Heads, yet I will endeavour to collect them in a concise Manner in this Place, that the Reader may see all the Offences of this Nature, as it were at one View; and for Method's Sake they shall be ranged Alphabetically.

Apprentices.  $\left\{ \begin{array}{l} \text{Counterfeiting any Stamps on their In-} \\ \text{dentures is Felony, without Benefit of} \\ \text{Clergy. 8 Ann. c. 9.} \end{array} \right\}$

Arms.  $\left\{ \begin{array}{l} \text{Imbezilling the King's Arms, Munition, \&c. to the Value of 20s. is Felony, but does not cause Corruption of Blood, loseth Lands but during Life, the Wife shall have Dower.} \end{array} \right\}$

The Prosecution must be in one Year. 31 Eliz. c. 4. this cannot be determined in Sessions.

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Buggery.

There must be *penetratio & emissio seminis*, for the one without the other will not make the Sin, and therefore the Indictment must be *quod carnaliter cognovit, &c.* My Lord Audly's Case is not held to be Law now.

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# Felony.

Buggery.

is within Age of Discretion, and then it is not Felony in him; and this may be the Reason why the Age of the Party is expressed in the Indictment.

Is a Breaking and Entry of a Mansion-house in the Night-time, with an Intent to commit Felony, whether such felonious Intent be executed or not. *Moor* 660, but an Infant under the Age of Discretion, an Idiot, or a necessitous Person, who shall enter a House being compelled by Hunger, are not Burglars.

The Entering of a House with the Doors open, is a Breaking in the Law, yet it is not Burglary, unless the Door, Windows, or Wall be broken, or the Latch drawn, or the Door unlocked; for if a Man comes into a House, and enters into a Chamber, and there breaks open a Trunk, and steals Money, or other Goods, this is no Burglary; because the Trunk was no Part of the Dwelling-house; but if he breaks open the Chamber-door, or any Door of a Cupboard which is fixed to the Freehold, this is an actual Breaking the House. *Keyling* 58, 59.

Burglary.

But Burglary may be committed without an actual Breaking, as by those who watch to prevent a Discovery while their Companions break the House.

By coming down a Chimney.

By entering with the Help of a Key.

By entering the Door being open, and the Owner of the House retiring to a Chamber which the Offender breaks open.

By breaking Glass in a Window, and hooking out Goods. *Anderson* 114. *Moor* 660. *Pop.* 42, 52.

By demanding Entry with a Constable or Sheriff's Officer, under legal Pretence, the Owner opens his Doors, then they bind the Constable, or Officer, and rob the House; for this is *in fraudem legis*.

If a Servant within designedly opens the Door or Window, and the Thief enters, it is Burglary in him, and Robbery in the Servant.

The Master lies in one Part of the House, and the Servant in another Part, who in the Night draws a Latch, and enters the Chamber of his Master, with Intent to murder, or to commit a Rape, it is Burglary. *Hutton 20. and Longford's Case.*

By putting the Hand or a Hook in the Window, and taking out Goods.

By turning the Key when the Door is lock'd on the inside.

The Church is a Mansion-house within the Meaning of the Law.

If a Man have a Lease of a Shop, which is in the Dwelling-house of another, and the *Lessee* work'd there in the Day-time, but laid in another House, the Shop was broken open in the Night, and the Goods stoln, this is not Burglary, because it was not a Mansion or Dwelling-house, for it was sever'd from the House by the Lease. *Hutton 33.*

Burglary.

To break a Chamber in a College or Inns of Court by Night, though no Body therein, or the Chamber of a Guest broken by the Inn-keeper, with an Intent to rob, is Burglary: But *Somerset-house* or *White-hall* are *domus mansionales* of the King; and if a Chamber is broken open there, it must be so alledged in the Indictment, and not *domus mansionalis* of the Person who lodg'd in it. *Kelyng 27.*

So of a Barn or Stable contiguous to a Dwelling-house, but a Shop distinct from the House is not.

Nor a Booth; but yet by a particular Statute, it is Burglary to break it open.

And by a late Statute, to break open a Shop or Ware-house belonging, or used with the Dwelling-house in the Day-time, and taking Money or Goods to the Value of 5 s. tho' no Person is therein, is Burglary.

Where one intended to murder, and for that Purpose broke a Hole in the Wall in the Night, and perceiving where the Person was, shot at him through the Hole,



## Felony.

Hole, but missed him, this was held Burglary. 1 *And.* 114, 115.

Entering in the Day-time, and lying privately 'till Night, then robs and departs, it is not Burglary; but if he breaks open any Door to get out, it is Burglary.

By Stat. 23 *H. 8. c. 1.* Clergy is taken away when a Dwelling-house is broken open, and the Dweller within, and put in Fear.

By Stat. 18 *Eliz. c. 6.* Clergy is taken away in all Cases of Burglary, and by Stat. 39 *Eliz. c. 15.* if a House is broke open in the Day-time, and Money and Goods to the Value of 5*s.* taken out of the House or Out-house thereunto belonging, though no Person therein, yet it is Felony without Benefit of Clergy.

Burglary.

By Stat. 3 & 4 *W. 3. c. 9.* If any Person feloniously take away Goods, being in a Dwelling-house, any Person being therein, and put in Fear; or shall rob any Dwelling-house in the Day-time, any Person being therein; or shall be accessary to the same, or shall break any Dwelling-house, Shop, or Warehouse thereunto belonging, in the Day-time, and feloniously take away Goods to the Value of 5*s.* though no Person therein; or shall counsel, hire, or command another to commit Burglary, shall not have Clergy.

Forty Pounds Reward is given for apprehending a Burglar, by 10 & 11 *W. 3. c. 3.* and 5 *Ann. c. 31.*

By 12 *Ann. c. 7.* If any Person enter into the Mansion or Dwelling-house of another, either by Day or by Night, without breaking the same, with an Intent to commit Felony, or being in the House commit any Felony, and in the Night breaks the House to get out, he is Guilty of Burglary, and ousted of Clergy.

Any Person feloniously stealing Money or Goods to the Value of 40*s.* or more, being in the Dwelling-house or Out-house thereunto belonging, though the same were not actually broke open, and tho' any

any Person be, or be not in such Dwelling-house, or Out-house, and the Aider or Assister therein, shall be Guilty of Burglary, and ousted of his Clergy.

If two are indicted for Burglary, and one is found Guilty of Felony, and the other of Burglary, it is not a good Verdict as to the Felony, because the Jury might have found both Guilty of Felony; but they cannot find one Guilty of Burglary, and the other of Felony, upon the same Indictment and Evidence.

Burglary.

If two are indicted for the same Burglary, and one convicted, and the other acquitted, if he who was acquitted took any Goods out of the House not mentioned in the Indictment, he may (notwithstanding his Acquittal) be indicted for that Felony, because the Facts are several Felonies. *Kelynge 30 Cr. El. 583. Cr. Eliz. 900.*

If any Person commits Burglary, House-breaking, Felony in stealing Horses, Money, Wares or Goods, from whom Clergy is taken away by Stat. 10 & 11 W. 3. c. 3. and being out of Prison, shall discover two or more Offenders, and convict them, he shall have a Pardon, which shall be a good Bar to an Appeal.

10 & 11 W. 3. c. 3.

It is Felony at Common Law, maliciously and voluntarily to burn the House of another.

It is not necessary that the whole House should be burnt; for it is Felony to set on Fire, and burn Part of it.

It must be done maliciously and voluntarily; for if it is done by Mischance or by Negligence, it is not Felony.

thing of  
Houses, &c.

Sometimes the Law implies Malice; as if the Offender intends to burn the House of A. only, and by this Means the House of B. is set on Fire, this is Felony, for the Event shall be coupled to the Cause, which was malicious.

It is Felony to set on Fire a Stack of Corn in Northumberland, Cumberland, Westmoreland or Durham; and so it is in the

Z

Night-

## Felony.

Burning of  
Houses, &c.

Night-time to burn Barns, Stables, Ricks of Corn, Hay, &c. or any of the Out-houses which are contiguous to the Dwelling-house, and the Offender is not to have Clergy. 22 & 23 Car. 2. c. 7.

But if a Barn stand remote, and is not Parcel of the Mansion-house, then 'tis not Felony, unless it hath Hay or Corn in it.

He who is in Possession of a House by Lease, sets it on Fire with an Intention to burn his Neighbour's House, this was held to be no Felony by the Opinion of three Judges; but *Crook contra Cr. Car. 376. Holmes's Case, Jones 351 Kelynge 29.*

Burning of  
Ships, &c.

A Captain, Master, or other Officer, or Mariner belonging to a Ship, and wilfully burning or destroying it, or procuring the same to be done, to the Prejudice of the Owner or Merchant, must suffer Death as a Felon; and if committed where the Admiralty has Jurisdiction, it shall be tried by Virtue of a Commission under the Great Seal in such Places in the Realm as shall be therein limited; and such Offender standing Mute, or challenging above the Number of 20 Persons, shall suffer Death without the Benefit of the Clergy. 1 Ann. c. 9. Made perpetual by 4 G. 1. c. 12.

Cattle.

Destroying Cattle, the Offenders shall suffer as in Cases of Felony. 22 Car. 2. cap. 7.

Chafes.

Persons hunting in the Night-time in Chafes, Forests, &c. disguised with painted Faces, and concealing the Fact on Examination, is Felony. 1 H. 7. c. 7.

Cloth.

Stolen from the Tenters in the Night. 22 Car. 2. c. 5. no Clergy.

Cloaths.

If any Person shall maliciously assault another in the publick Streets or Highways, [with Intent to tear, cut, or spoil their Garments, he shall be guilty of Felony.

Coach-house.

Stealing Goods out of it to the Value of 5 s. though not broke open, or assisting any Person to do it, either by Day or Night. 10 & 11 W. 3. c. 3. 3 H. c. 1. 2 H. 6. c. 9.



Mixing blanched Copper with Silver to make it heavier, and resemble Gold ; or receiving, or paying counterfeit milled Money, or Money unlawfully diminished, is Felony. By 8 & 9 W. 3. c. 26. but no Corruption of Blood, or Loss of Dower.

Any Person may cut, break or deface Pieces of Silver Money, counterfeit or diminished. 9 & 10 W. 3. c. 21.

And by 6 & 7 W. 3. c. 17. a Reward of 40*l.* is ordered for apprehending Money Coiners, Clippers, &c.

Burning Stacks of Corn, Ricks, &c. is Felony. 22 & 23 Car. 2. c. 7.

To inroll a Deed in the Name of another Person without his Privy or Consent is Felony without Clergy. 21 Ja. 1. c. 26.

Cutting out an Eye, slitting the Nose, or cutting it off, or the Lip ; or cutting off or disabling any Limb, or Member, with an Intent to maim or disfigure the Person, is made Felony without Benefit of Clergy, in the Actor, Counsellor, Aider or Abettor, being Privy to the Offence, by 22 & 23 Car. 2. c. 1.

Above fourteen Years of Age remaining here a Month. 1 & 2 Ph. & M. c. 4. 5 Eliz. c. 20. no Clergy.

Prisoner suffered voluntarily to Escape being under an Arrest for Felony, 'tis Felony in the Officer.

Counterfeiting Exchequer Bills, Bank Notes, or any Indorsement, &c. or tendering such Bills in Payment, knowing the Forgery, is Felony without Clergy. 8 & 9 W. 3. 7 An.

If any Person shall steal, or take by Robbery, any Exchequer Orders, or Tallies or other Orders, intitling any other Person to any Annuity, or Share in any Parliamentary Fund ; or Exchequer Bills, Bank Notes, South-Sea or East India Bonds, Dividend Warrants, Bills of Exchange, Navy Bills or Debentures, Goldsmiths Notes, or other Bonds or Warrants, Bills or Promissory Notes, being the Property of any other

# Felony.

Exchequer  
Lills.

Person, or Corporation, notwithstanding the said Particulars are termed in Law a Chose in Action, it shall be construed to be Felony of the same Nature, and in the same Degree, and with or without Benefit of Clergy, as it wou'd have been if the Offender had taken by Robbery any other Goods of like Value, and he shall suffer accordingly. Stat. 2 G. 2. But this Act does not extend to *Scotland*.

Nor shall any Attainder for any Offence made Felony by this Act, work any Corruption of Blood, Loss of Dower, or Disherison of Heirs.

This Act is to be in Force for five Years from the 29th of *June*, 1729, and from thence to the End of the then next Session of Parliament.

Fines.

To acknowledge a Fine in the Name of another who is not privy or consenting, is Felony without Clergy. 21 Jac. 1. c. 26. the Sessions have no Jurisdiction of this Offence.

Forgery.

Forging a Deed or Writing to the Intent the Inheritance of Land may be defeated or charged, or the Title troubled &c. after a former Conviction, made Felony. 5 Eliz. c. 14. no Clergy.

To falsely make, forge or counterfeit or procure the same, or wilfully act or assist in the false making or counterfeiting any Deed, Will, Testament, Bond, Writing Obligatory, Bill of Exchange, Promissory Note for Payment of Money or any Acquittance or Receipt either of Money or Goods, with Intention to defraud; or shall utter or publish as true any false or counterfeit Deed, &c. knowing the same to be false, is Felony without Benefit of Clergy, by Stat. 2. G. 2.

Hawks.

Stealing them, or finding, or concealing them, and not bringing 'em to the Sheriff to be proclaimed. 37 Ed. 3. c. 19. Clergy.

Horses.

Destroying Horses in the Night-time is Felony, but only wounding them entails treble Damages.

Malice

Malicious burning of Houses, &c. was made Felony by 22 & 23 Car. 2.

c. 7. no Clergy.

And demolishing Meeting-houses, Dwelling-houses, &c. is Felony; no Clergy, by 1 G. 1. c. 6.

Receiving, retaining, or maintaining him knowingly. 27 Eliz. c. 2. no Clergy.

Acknowledging or procuring to be acknowledged, a Judgment in the Name of another Person is Felony. 21 Ja. 1. c. 26. no Clergy.

The King shall have all the Goods of Felons and Fugitives, and the Year, Day, and Waste of Lands, &c. 17 Ed. 2.

Conspiring to kill any of the King's Council, is Felony. 3 H. 7. c. 14. no Clergy.

Cutting off any Limb or Member with an Intent to maim or disfigure the Person. 22 & 23 Car. 2. c. 7. no Clergy.

Imbezilling Goods, &c. is Felony. 3 & 4 W. & M. c. 9.

Forging or counterfeiting a Lottery-Ticket, or forging standing Orders made and exchanged for Lottery-Tickets, or altering the Number or principal Sum of any Order, &c. is Felony without Clergy. 8 Ann. c. 4. & 9 Ann. c. 23.

Marrying a second Husband or Wife, the first being alive, is Felony. *Vide* Bigamy.

Slitting or cutting the Nose, or cutting off a Nose or Lip, is Felony without Benefit of Clergy. 22 & 23 Car. 2. c. 7.

Wilful poisoning, if the Party die within the Year and the Day. 1 Ed. 6. c. 12. and the Aiders, Abettors, &c. shall suffer Death.

Popish Priest, *vide* Jesuit.

It is Felony for any Person being in for Felony, to break Prison. 1 Ed. 2. 3 H. 7. c. 14.

Assaulting and striking, or attempting to kill a Privy Counsellor when in Execution of his Office, is Felony without Benefit of Clergy. 9 Ann. c. 16.



## Felony.

To commit a Rape, was Felony at Common Law; *Co. Litt.* 123. 3 *Inft.* 60. but by the Stat. of *Westminster* 1. c. 13. it was made a Misdemeanour only punishable by Fine and Imprisonment; but ten Years afterwards by Statute of *Westminster* 2. c. 34. it was made Felony again.

If the Woman is under ten Years old, tho' she consent, by 18 *Eliz.* c. 7. if above ten Years, and not consenting to do the Act, tho' she doth consent after 'tis done.

But in this subsequent Consent, the Husband may appeal. 6 *Ric.* 2. c. 6. no Clergy by 18 *Eliz.* c. 7. upon Conviction, Confession or Outlawry; and tho' she will not prosecute, yet the Husband may, and if she have none, then the Father or next of Kin may appeal.

The Husband may prosecute for a Rape upon his Wife, tho' she be dead, and tho' she be divorced, *causa frigiditatis*. *Mich.* 43 *Ed.* 3. f. 23. *Lib. Assiz.* 44. f. 285.

In Scotland the Woman ought to complain the same Day, or Night in which she was ravished, and by our Law she ought to complain in forty Days afterwards, but rather immediately, for Concealing it implies a Consent before the Fact; so also, if she doth conceive with Child.

Those who assist in committing a Rape, being present, are Principals. 12 *Rep.* 37. *Saville* 42.

It was a Doubt whether a Rape could be committed on a Girl of seven Years old, but if she had been nine Years, it was no Question. *Dyer* 304.

*Anno* 9 *Car.* 1. One Martin Pige was indicted at the *Old-Baily*, for that he carnaliter cognovit an Infant under the Age of ten Years. At his Trial the Jury would not find him guilty, because it was not proved he entred the Body of the Child; but he having very much abused her, the Court ordered an Indictment of Battery to be exhibited against him, which was tried at the Bar; and he was found guilty, and fined 100 Marks, and ordered to stand

Rape.

in the Pillory, &c. and to be bound with Sureties for his good Behaviour during Life, and committed during the King's Pleasure.

If a Woman consenteth for fear of Death, 'tis a Rape, because the Consent ought to be free and voluntary.

A Woman may justify killing a Man attempting to ravish her.

In an Appeal of Rape, by Virtue of the Statute *Westm. 2. c. 34.* it was objected, that the Appellant had counted, that on such a Day, and in such a Year and Parish, the Appellee *eam rapuit & carnaliter cognovit*, without saying *felonice*; neither did she aver, that she did not Consent either before or after the Fact, and for this Reason it was held ill.

Recognizance.

Acknowledging a Recognizance in the Name of any Person without his Knowledge and Consent, is Felony. *21 Ja. 1. c. 26.* no Clergy.

Records.

Imbezilling of Records made Felony, by *8 H. 6.*

Riots.

Rioters being twelve in Number, not dispersing within an Hour after Proclamation, are guilty of Felony, without Clergy. *1 Geo. 1. c. 5.*

Recoveries.

Suffering a Recovery in the Name of another, is Felony, no Clergy. *21 Ja. 1. c. 26.*

Rescous.

Rescous of a Prisoner taken out of any pretended privileged Place, and he who made the Rescous not paying 500 *l.* within a Month after Conviction, must be transported, and if he return within seven Years, 'tis Felony. *8 & 9 W. 3. c. 27.*

Rescuing of Felons deliver'd to be transported, is Felony; and if any Felon who has been transported shall be afterwards found at large in any Part of *Great Britain*, without lawful Cause before the End of the Term for which he was transported, he shall suffer Death as a Felon.

## Felonv.

Robbery is a felonious and violent taking away Money or Goods from the Person of another to any Value, putting him in Fear, for without putting in Fear, 'tis no Robbery. *Dyer 224.* and by Stat. 13 *Ed. 1. c. 1.* a Hue and Cry is to be made from Town to Town, and County to County, &c. after the Robbers.

'Tis the Violence and putting in Fear, distinguishes this Offence from a Cut-purse, which is *Clam & secreta.* 3 *Inst.* 68.

All that are in Company, where the Robbery is committed by one of them only, are Principals. And where several come to rob a Man, and one of them committeth the Fact out of Sight of the others, and afterwards returns to his Companions, it is Robbery in them all. 1 *And.* 116.

Commanding a Person to deliver Money, &c. and he doth accordingly, is a Taking, and a Robbery, altho' the Thief do deliver the Thing taken back again to the Owner.

Robbery.

But an Assault without taking any thing from the Person, is no Robbery; tho' if a Man be pursued, and endeavour to make his Escape, wherein he lets fall his Hat or his Money, and the Thief takes it up; this in Law is a Taking from the Person, and Assaulting a Man, and putting him in Fear, and then driving away his Cattle in his Presence, is a Taking from his Person and a Robbery.

A Man delivers a Sum of Money upon the Highway, ruled to be no Robbery, unless it be found that the Person was put in Fear. *Dyer 224.*

If a Servant is robbed of his Master's Goods in the Sight of his Master, it shall be taken to be a Robbery of the Master, for the Property was in the Master, altho' the Money was in the Hands of the Servant. *Style's Rep.* 318.

When a Servant is robbed, he must be sworn as to the Robbery.

And



And if the Robbery be done by Day-light, whether before or after Sun-rising or setting, the Hundred is chargeable. 2 *Cro.* 106.

When a Person is robbed, in order to sue the Hundred, he must take the following Method; he must give Notice with the most convenient Speed to the next Village, or to some Person inhabiting near the Place where the Robbery was committed; he ought to commence his Suit at the End of forty Days, and within one Year after the Robbery committed; and he must, within twenty Days before the Action be brought, be examined on Oath before a Justice of Peace; for he may in this Case be a Witness in his own Cause, and may be admitted to give Oath how much Money his Servant had. 27 *Eliz.* c. 13. and if he knows any of the Parties, must enter into a Recognizance to prosecute. If a Justice of Peace refuses to examine a Person robbed, an Action will lie against him upon the Stat. 27 *Eliz.* c. 13.

Robbery.

A Robbery was committed in *Com' Berks*, and the Oath was made in *London* before a Justice of Peace who lived in *Berkshire*, and held to be Good, though not made in *Com' Berks*. *Cro. Car.* 211.

If any Robbery be begun in the Day-time (except on a *Sunday*) but if not ended till Dark-night, or if a Highway-man oblige a Waggoner in the Day-time to drive his Waggon out of the Way, and rob in the Night, these shall be adjudged Robberies in the Day, because the first Seizure makes it so, for it is accounted one continued Act, and shall relate to the Beginning of it; and therefore in all these Cases the Hundred is chargeable. *Sid.* 263.

A Robbery shall be said to be done in that Hundred where the Party is first set upon, altho' his Goods be taken from him in another Hundred; but if a Man is seized by Robbers in one Hundred, and

and carried into another, and there he was robbed; there the Action must be brought against the Hundred where he was robbed, because the Statute mentions particularly the Hundred, where the Robbery was committed, shall be liable to take one of the Robbers within forty Days, or pay the Money lost. *Hill. 1 Ann. B. R. Hundred of Basingstoke's Case.*

Where a Man is seized in one Hundred, and carried into a Dwelling-house inhabited in another Hundred, and there robbed, neither Hundred is liable because the Statute does not extend to Robberies in Houses. *3 Leon. 350.*

But if one of the Robbers be apprehended by the Party robbed, or by any other Person within forty Days, the Hundred shall be discharged. *Co. 179.*

### Robbery.

Immediately on Notice of a Robbery committed, Hue and Cry is to be made from Town to Town, &c. and the Constable on the Parties being described, is to call on the Parishioners of his Precinct to assist him in the Pursuit, and if the Offender be not there, he must give Notice to the next Constable, who is to do the same as the first, &c.

Persons neglecting to make Hue and Cry, may be fined and imprisoned.

And the Inhabitants of every Hundred, where the Hue and Cry shall cease and neglect to be made, shall answer one Moiety of the Money, and Damages, which shall be recovered against that Hundred where the Robbery was committed, and payable to the Inhabitants of such Hundred. *27 Eliz. c. 13.*

Where Persons travel on the Lord's Day, and are robbed, there the Hundred is not chargeable, yet Hue and Cry ought to be made to apprehend the Robbers for they are answerable for the Value to the King. *29 Car. 2. c. 7.*

Any Person who shall apprehend and prosecute a Highway-man to Conviction, shall on producing the Certificate of the Judge before whom the Party was convicted,

Robbery.

convicted, receive of the Sheriff of the County where the Robbery was committed, the Reward of 40*l.* and be intitled to the Horse, Furniture, Arms, Money, &c. of the Highwayman, unless they were stoln from other Persons, in which Case the Property is not altered; and if any one is kill'd in taking a Highwayman, those who have a Right to administer, shall have the 40*l.* 4*£* 5*W.* & *M. c.* 8.

Sacrilege.

Stealing any Thing out of Church is Felony without Clergy, and that at Common Law.

Sea and Seamen.

Subjects in passing over the Sea to a foreign Prince, in order to serve him. 3 *Jac.* 2. *c.* 4.

Captains and Mariners belonging to Ships, destroying the same to the Prejudice of the Owners, and Merchants, shall suffer Death as Felons. 1 *Ann.* *c.* 9.

Servants.

Other than Apprentice imbezilling the Goods of his Master to the Value of 40*s.* deliver'd to him, &c. 21 *H.* 8. *c.* 7. after Decease of his Master spoiling Goods, &c. 33 *H.* 6. *c.* 1. and not appearing in *B. R.* upon Proclamation, he hath Clergy by the Stat. of 1 *Ed.* 6. *c.* 12.

Receiving Master's Rents, and going away, not within the Statute.

Not to extend to Apprentices under Fifteen Years of Age by 12 *Ann.* *c.* 7.

Sheep.

Sending them beyond Sea after a former Conviction. 8 *Eliz.* *c.* 3. Clergy.

Destroying or killing them in the Night. 22 & 23 *Car.* 2. *c.* 7.

Ships.

Wilful casting away a Ship, or causing the same to be done, or making Holes in the Bottoms or Sides, tending to the Loss of the Ship, is Felony. 12 *Ann.* *cap.* 18.

Shop.

Breaking a Shop in the Day-time, and taking to the Value of 5*s.* 3 & 4 *W.* & *M. c.* 9. though he doth not break it in the Day-time, yet if he take the Value of 5*s.* 11 *W.* 3. *c.* 3.

Wandering.



## Felony.

- Wandering. 32 *Eliz. c. 17.* no Clergy.  
 Departing from a Captain without  
 Leave. 18 *H. 6. c. 19. 2 Ed. 6. c. 2.*  
 Clergy.
- Soldiers. { Officer or Soldier out of *Great Bri-*  
*tain* raising a Mutiny, or refusing to  
 obey a superiour Officer, or resisting any  
 Officer in the Execution of his Office,  
 or drawing, striking, or offering to draw  
 or lift up any Weapon against his supe-  
 riour Officer, shall be Guilty of Felony.  
 7 and 10 *Ann.* the said Felony to be try'd  
 in *B. R.* or before Commissioners assigned  
 by the Crown. 10 *Ann. cap. 10.*
- Stable. { Stealing Goods to the Value of 5*l.*  
 out of a Stable, tho' not broke open, or  
 assisting to do it by Day or Night. 10 &  
 11 *W. 3. c. 3.*
- Stamps. { Counterfeiting the Stamps of Parch-  
 ment, Vellom, Paper, &c. or know-  
 ingly selling such counterfeit Stamps.  
 9 & 10 *W. 3. c. 25.* no Clergy.
- Stealing { Stealing any Goods or Chattels which  
 Goods hir'd by Contract or Agreement, the Party  
 to Use. was to use, is Felony, by 3 & 4 *W. &*  
*M. c. 9.* now made perpetual, by 6 &  
 7 *W. 3. c. 14.*
- Statute. { To acknowledge a Statute in the Name  
 of another not privy, &c. is Felony.  
 21 *Jac. 1. c. 26.* no Clergy.
- Tongue. { Cutting it out maliciously. 5 *H. 4.*  
*c. 5. 22 & 23 Car. 2. c. 7.* no Clergy.
- Transport- { A Rogue and he returning without Li-  
 ing of cense. 39 *Eliz. c. 4. Jac. 1. c. 7.*  
 Rogues. The Court, before whom Felons shall  
 be convicted liable to Transportation,  
 may nominate two or more Justices of  
 Peace to contract with any Person for  
 the Transporting of such Felons, and  
 cause the Felons to be delivered by  
 the Gaoler to the Person contracting,  
 &c. and to order such sufficient Secu-  
 rity as directed by 4 *Geo. 1. c. 11.* And  
 all Charges about making Contracts, ta-  
 king Securities, and conveying of Felons  
 in order to Transportation, are to be born  
 by the Place for which the Court was  
 held, which ordered the Felons to be  
 transported,

transported, to be paid by the Treasurer of the County, by Order of Quarter-Sessions.

It is Felony to rescue such Felons or Offenders, as are ordered for Transportation; so also to aid or assist them in making their Escape. 6 Geo. 1. c. 23.

A Felon ordered for Transportation, who shall be afterwards at large within the Kingdom of *Great Britain*, without some lawful Cause, before the Expiration of the Term, for which such Felon was ordered to be transported, being lawfully convicted, is Guilty of Felony, without Benefit of Clergy, and may be tried either in the County where apprehended, or from whence ordered for Transportation; and the Certificate of the Clerk of the Peace, containing the Effect and Tenor of the Indictment, and Conviction of such Felon produced in Court, is a sufficient Proof. 6 Geo. 1. c. 23.

All Sureties for Transportation of Felons to be by Bond, in the Name of the Clerk of the Peace of the County, &c. and are to be prosecuted in their Names at the Charge of the County, &c. *ibid.*

The King may at any Time dispense with such Transportation, and allow of the Return of such Offenders, they paying their Owner such a Sum as shall be adjudged reasonable by any two Justices residing where such Owner dwells; and where such Offenders shall have served their respective Terms, such Services shall have the Effect of a Pardon, for that Crime for which they were transported. 4 Geo. 1. c. 11.

Breaking a Ware-house in the Day-time belonging to a Dwelling-house, and taking to the Value of 5 s. is Felony, by 3 & 4 W. & M. c. 9. and by 11 W. 3. c. 3. tho' not actually broken, no Clergy.

Hunting in a Warren in the Night-time with painted Faces.

## In the First Degree.

By Invocation or Conjurati<sup>o</sup>n of Evil Spirits, or consulting, entertaining, or employing them.

Taking up a dead Person to be employ'd, though not actually used in Charm or Witchcraft.

Doing any Witchcraft, Inchantment, or Charm, &c. whereby any Person is killed, destroyed, consumed or lamed, no Clergy. 1 Jac. 1. c. 12.

Witchcraft.

## In the Second Degree.

By taking upon them by Inchantment, Charm, &c. to tell where Treasure is, or where Goods lost, &c. may be found, or to provoke unlawful Love, or destroying Goods, or Cattle, or using Witchcraft to hurt any Person, tho' not done, the first Offence is Imprisonment for a Year, and Pillory, and being convicted thereof, and receiving Judgment, and offending again, it is Felony. 1 Jac. 1. c. 12.

It may be expressed by the Word *Incantatio* in an Indictment. *Latch* 156.

Taking away against her Will, and marrying her, but then she must have Lands or Goods, &c. or be an Heir Apparent, and must be married or defiled. 3 H. 7. c. 2.

Woman.

Taking in one County, and marrying in another, Trial must be where married, it cannot be in Sessions.

Privy to Marriage, and not to the Force, not guilty; marrying with Consent, but under the Force, Felony. 39 Eliz. c. 2. no Clergy.

Wood and Copice.

Maliciously setting on Fire, burning, or causing to be burnt, any Wood, Underwood or Coppice, or any Part thereof, Felony. 1 Geo. 1. c. 48.

Larceny what.

Larceny is a felonious Taking and Carrying away the Goods of another, not from his Person, nor out of his House, and is called Grand Larceny, when the Thing stolen



Stolen exceeds the Value of 12*d.* for which the Offender shall be hanged, unless he have his Clergy; and when it is under that Value it is called Petit Larceny, and is punished with Whipping. 3 *Inst.* 107.

But a Jury may find the Goods stolen of less Value than 12*d.* and so convict the Prisoner of Petty Larceny only. *Hetty's Rep.* 66. *Bromly's Case.*

If a Man break a House in the Day-time, and therein take Goods and remove them from one Place to another in the same House, with an Intention of Theft, it is Felony by the Common Law, the Taking them being a Possession, and Stealing. *Kel. Rep.* 31. *Simson's Case.*

If a Man remove Goods in the same House with a felonious Intent.

A Lodger in an Inn rose in the Night, and carried Linen out of his Chamber into another Room, with an Intent to steal it, and going to the Stable for his Horse, the Servant took him therewith, and it was adjudged Felony. 27 *Ed.* 3. *lib. Aff. pl.* 39.

On an Indictment against a Person for digging up the Graves of several Persons in the Night, and taking away their Winding Sheets, and afterwards interring their Bodies again: It was resolved, that the Property of the Sheets remained in the Owner, whose they were when made use of to that Purpose, and not of the dead Person; so the Indictment was good, and the Offender was found Guilty of Felony, but had his Clergy. *Co. Lit.* 113. *Haine's Case.*

Property of Grave Cloaths in whom.

If a Tradesman delivers Goods to his Men to work in his House, and the Workmen steal away Part of them, it is Felony, notwithstanding the Delivery to the Party, by Reason the Property is not altered by such Delivery, but still remains in the Owner.

But there is such a Property in a Person to whom the Goods are delivered, that if they are stolen from him by a third Person, he may prefer an Indictment. *Mich.* 11 *H.* 7. One *A.* was indicted for stealing the Goods of *B.* and on the Trial, it appeared by Evidence, that the Goods were not *B.*'s, but that he had only the Possession or Care of them being a Carrier, and the Goods stolen from him in his Journey; and it was adjudged in this Case, that though a Man has not an absolute Property in the Goods deliver'd, yet he hath a Possessory Property sufficient to maintain an Indictment. *Keil. Rep.* 29.

Possessory Property sufficient to maintain an Indictment.

And an Indictment may be brought for stealing the Goods of a certain Person unknown. 12 *H.* 6.

Where

Where stolen Goods are not forfeited.

Where a Felon steals Goods, and hides them, and afterwards flies for the Felony, those Goods are not forfeited as Waifs in Law; because Waifs are properly those Goods which the Felon hath about him, and which he leaveth, being closely pursued, that he may more readily make his Escape; but stolen Goods which he hides may be taken by the Owner where-ever he finds them. *5 Rep. Foxley's Case.*

Cases of Felony.

If one come to a Market pretending to buy a Horse, and the Owner giveth him leave to ride the Horse to try his Paces, and he rides away, this is Felony. So if I deliver Goods to a Porter to carry to such a Place, and he carrieth them to another Place, and there openeth and disposeth of them, this is Felony. The Law is the same if the Goods were carried to the Place appointed, and then imbezilled; because when they are brought to that Place the Contract is determin'd, and the Possession is revested in the Owner; and so being taken away afterwards, it is Felony. *Kelyng 82, 83.*

Upon an Indictment of Felony, the Jury found that the Defendant came to the Shop of *A. C.* and asked to see two laced Cravats, which she shewed, and delivered them into his Hands; then he asked the Price, and she told him so much, he offered Half the Money, but ran away with the Goods in her Sight: Adjudged Felony, because the subsequent Act in running away shews his Intention to take the Goods *felleo animo*; and though they were delivered to him by the Owner, yet in Law they were not out of her Possession; because the Contract was not perfected, and by Consequence the Property not altered; so the Fact is as if he had taken the Goods openly out of the Shop and run away with them. *Raym. 276.*

By Statute 10 & 11 *W. 3. c. 3.* If any Person steal out of a Shop, Warehouse, &c. any Goods privately and feloniously, of the Value of 5*s.* or more, though such Shop, &c. be not broken open, &c. or that shall assist in committing such Offence, &c. shall not have the Benefit of Clergy.

9 *Geo. 1.* This Case happened at a Sessions at the *Old Baily*: A Shirt, the Property of *W. R.* was left in the Shop of *T. S.* to be sent to one to mend, and it was stole by the Prisoner out of the Shop, for which he was convicted; and the Question was, Whether he should have Clergy; and adjudged he might; for this was not Felony within that Statute, which was made as a Remedy for the Owners of Shops to preserve their own

Goods

Goods there by Way of Trade, and consequently stealing Goods casually left there to the Value of 5*s.* or more; was not Felony within that Statute, and without Benefit of Clergy.

By Stat. 4 *Geo.* 1. c. 11. He who takes Money, or any Reward, to help another to his Goods which were stolen, shall be Guilty of Felony himself, and suffer as if he had stolen the Goods, unless he apprehends the Felon who did.

By Stat. 6 *Geo.* 1. c. 23. He who shall discover, apprehend, and prosecute to Conviction of Felony without Clergy, any Person for taking Money, or other Reward, to help another to his Goods which are stole, (such Offender not having apprehended the Felon who stole them) and brought him to Trial, and given Evidence against him, shall be intitled to a Reward of 40*l.* for every Offender so convicted; and shall have the like Certificate and like Payments made without Fee, as any Person for apprehending, prosecuting, and convicting a Highway Man.

By Stat. 9 *Geo.* 1. c. 22. It is Felony without Benefit of Clergy for any Person after 1 *June*, 1723, to appear armed, and having his Face blacked or disguised.

It is Felony to take Money to help to stolen Goods, unless he apprehends the Felon.

Abstract of Black Act.

In any Ground inclosed where Deer have been or shall be kept.

Or in any Warren or Place where Hares or Conies have been kept.

Or in any High Road, Heath, Common or Down; or shall unlawfully and wilfully hunt, wound, kill or destroy any Deer in Forest, Chase, Park, or inclosed Ground.

Or shall unlawfully rob any Warren or Place where Conies or Hares are kept.

Or shall unlawfully take away or steal any Fish out of any River or Pond, or break down any Head or Mound of a Fish-Pond whereby the Fish shall be lost.

Or maliciously kill, maim, or wound any Cattle.

Or cut down or destroy Trees in any Avenue, Garden, Orchard, or Plantation, for Ornament or Shelter, or Profit.

Or set Fire to any House, Barn, Outhouse, Hovel, Mow of Corn, Straw, Hay or Wood.

Or maliciously shoot at any Person in any Dwelling-house, or other Place.

Or knowingly send any Letter with a fictitious Name, demanding any valuable Thing.

Or forcibly rescuing any Person in Custody for any of the said Offences.



Or who shall by Gift, or promise of any Reward, procure any Subject to join with him in any such unlawful Act.

By the same Statute it is Felony without Benefit of Clergy, for any Person Guilty of any of the said Offences after 2 February, 1722, not to surrender himself before 24 July, 1723, to a Justice of Peace where the Offence was committed, and voluntarily to make a Confession and Discovery on Oath, of his Accomplices; and if he surrenders before 24 July, 1723, he shall be pardoned.

See the Form  
of the Certifi-  
cate hereafter.

He who is charged with any of the said Offences before two Justices, by the Oath of one Witness, the Justices shall certify such Charge under their Hands and Seals to a Secretary of State, who shall lay the same before the King in Council; who may make an Order for the Offender to surrender himself to some Justice within forty Days, which Order shall be published in the *Gazette*, and sent to the Sheriff; and within six Days after shall be proclaimed by him, or his Officer, in two Market-Towns next the Place where the Offence was committed, and a Copy thereof fix'd in some publick Place there; and if the Offender shall not surrender himself pursuant to such Order, he shall stand Attainted of Felony without Benefit of Clergy; and the Judge of Assize, upon producing such Order under Seal of the Council, may award Execution.

Concealing, abetting, or succouring an Offender, after the Expiration of the Time he is to surrender himself, knowing him to be charged on Oath; and that he hath been required by such Order to surrender himself; is Felony without Benefit of Clergy.

Offender taken before the Time expir'd in which he is by the said Order to surrender himself, shall be tried by due Course of Common Law.

The Inhabitants of the Hundred are chargeable to make Satisfaction for any Damages sustained by any Person, and done by any Offender against the aforesaid Act 9 Geo. 1. c. 22. the Sum to be recover'd not exceeding 200*l*. And if the Plaintiff recover in the Action, which must be brought within one Year after the Offence against any Inhabitant, and take out Execution against him, all the other Inhabitants of that Hundred shall be ratably and proportionably taxed towards an equal Contribution for the Relief of the Defendant; which Tax must be raised by such Ways, and in such Manner as is prescribed for raising Damages recovered against the Hundreds in Cases of Robbery, by

The Act 27 Eliz. c. 13. (*viz.*) two Justices (*Quorum unus*) may tax the Towns, Villages, Parishes, and Hamlets in the Hundred, to make an equal Contribution, &c.

No Person shall recover Damages by Virtue of this Act, unless they or their Servants, within two Days after such Damage done them, give Notice of such Offence to some of the Inhabitants of some Town, Village or Hamlet, near the Place where the Fact was committed, and shall within four Days after such Notice give in their Examination upon Oath, or the Examination upon Oath of their Servants, &c. before any Justice of Peace of the County, &c. where the Fact was committed, inhabiting within or near the said Hundred, whether they know the Persons that committed the Fact; and if they confess that they do know the Persons, or any of them, then they shall be bound by Recognizance to prosecute the Offenders.

Where any one of the Offenders shall be convicted within six Months after the Offence, no Hundred, or any Inhabitant thereof, shall be liable to make Satisfaction to the Party injured.

If any Person shall apprehend, or cause to be convicted, any of the Offenders above-mentioned, and shall be killed or wounded, so as to lose an Eye, or the Use of any Limb in endeavouring to apprehend such Offenders, Proof thereof at the General Quarter-Sessions for the County, &c. where the Offence was committed, the Justices shall give a Certificate thereof to the Person so wounded, or the Executors, &c. of the Party so killed, which shall intitle them to receive of the Sheriff of the County 50 *l.* to be allowed the Sheriff in passing his accounts; which the Sheriff is to pay within 30 Days from the Day on which the Certificate shall be shewn him, on the Forfeiture of 10 *l.* to the Person to whom the Certificate is given; for which 10 *l.* as well as the 50 *l.* such Person may bring his Action on the Case against the Sheriff, as for so much Money had and received to his Use.

Every Offence against this Act may be enquir'd of, and tried in any County in *England*, as if the same had been therein committed; but no Attainder of Felony by this Act shall make any Corruption of Blood, Loss of Power, or Forfeiture of Lands or Tenements, Goods or Chattels.

This Act shall be openly read at every Quarter-Sessions, and at every Leet, or Law-Day.

This Act was to continue in Force from 1 *June* 1723, three Years, and from thence to the End of the next Session of Parliament. But by Stat. made 12 G. 1. it is

continued from the Expiration thereof for the Space Five Years, and from thence to the End of the then next Session of Parliament.

Goods delivered to a Person pretending to buy them.

If a Person deliver Goods to another pretending to buy them, and he runs away with them, 'tis Felony, for the Goods were not properly out of the Possession of the Owner by his Delivery, but by completing the Contract, which was then only begun, and Running away thereon a felonious Intention.

Or to a Carrier, or a Porter.

And if Goods are delivered to a Carrier, or Porter, &c. to carry to a certain Place, and he carrieth them to another Place, and converteth 'em to his own Use, it is Felony; so if one come into a Market or Fair, &c. pretending to buy a Horse, and the Owner giveth him leave to ride the Horse, and try his Paces, and he ride away with him, 'tis Felony. *Kelynge* 82, 83. Stealing of Goods let to a Person in Lodgings, is Felony. 4 *W. & M. c.* 9.

Where Goods are delivered upon a special Trust to deliver them at *A.* it is not Felony to convert the Goods in a fraudulent Manner, until that Trust is determined, no more than it could be Felony in a Carrier, converting of Goods delivered to him to carry to another Place, before that Special Trust was determined. *Peckham* G. 1. at the *Old Bailey*. 3 *Inst.* 107. *H. P. C.* *Staundf.* 25. *Kelynge* 81.

One who has the Possession of Goods by Delivery to the Party, may be Guilty of Felony by taking them *animo furandi*; as Carrier, Weaver, Miller, taking away of Goods, Silk or Corn, &c. Resolved 13 *Ed.* 4. f. 10. *Staund. P. C.* 25. a. *Kelyng* 35. 1 *Roll. Abr.* cited, *Harwk. P. C.* 1 pt. c. 33.

'Tis Felony to steal any Linen, &c. from Whitster's Ground, &c.

By Stat. 4. G. 2. All Persons who shall by Day or Night feloniously steal and take away, or wilfully and maliciously hire any other Person to steal from any Whitening or Bleaching Croft, Lands, Fields or Ground, Bowking-house, Drying-house, or other Building or Place, made Use of by any Whitster, Crofter, Bowker, or Bleacher, for whitening any Linen, Fustian, or Cloth, or Cloth made of Cotton and Linen Yarn, or Cotton Tape, Inkle, Filleting, Laces, or any other Cotton Goods, to the Value of 10 s. or who buy such Goods knowing them to be stolen, being convicted thereof, shall be guilty of Felony, and suffer without Benefit of Clergy, unless the Judge or Court think it reasonable, upon the Circumstances of the Case, that the Offender should be transported to some of our Colonies or Plantations beyond the Seas; in which Case they shall



Subsequent Court, with like Authority to be holden for the same Place, may order the Convict to be transported for seven Years, as is directed by the Acts of 4 Geo. 2. c. 1. & 6 G. 1. c. 23.

And if any Person ordered to be transported, shall refuse so to be, or break Prison, escape, come on Shore, or return before the Time expired, he shall suffer Death. Stat. 4 G. 2.

By Stat. 4 G. 2. If any Person shall falsely make, forge or counterfeit, or procure to be forged or counterfeited, or wittingly assist in making any Passes for any Ships whatsoever, commonly called *Mediterranean Passes*, shall counterfeit the Seal, or the Hand of the Lord High Admiral, or of any Commissioner for executing the said Office, to any such Passes, or shall alter or erase any Authentick Pass, or shall utter as true any such Passes, knowing them to be false, being convicted in any proper Court of *Great Britain, Ireland*, or any of the Plantations, where such Offence shall be committed, shall be adjudged guilty of Felony, and shall suffer Death without Benefit of Clergy.

So to forge  
Mediterranean  
Passes, &c.

The Crimes before mention'd committed in any Place, whether within his Majesty's Dominions or without, may be enquir'd of in any County of *Great Britain*, by Virtue of the King's Commission of Oyer and Terminer, and Return of Delivery, or before any Court of Justiciary in Scotland, in the same Manner, as if such Offences were done within the County where the Offenders shall be tried. Stat. 4 G. 2.

May be in-  
quir'd of in any  
County, &c.

By Stat. 4 G. 2. All Persons who shall steal, rip, or break, with Intent to steal any Lead, Iron Bar, Iron Pipe, Iron Palisado, or Iron Rail, being fixed to any Dwelling-house, Out-house, Coach-house, Stable, or other Building, belonging to a Dwelling-house or other Building, fixed in a Garden, Orchard, Coach-yard, or Fence belonging to such Building, shall be adjudged guilty of Felony, and be transported for Seven Years; and all Persons who shall buy or receive such Goods, knowing them to be stolen, are thereby declared to be liable to the same Punishment. Stat. 4 G. 2.

Persons steal-  
ing Lead, Iron  
Bars, &c. off  
Houses, &c. to  
be transported,  
&c.

Felony may be committed by making Use of a Process of Law, fraudulently to obtain Goods, viz. by procuring a Thief to steal where a Man hath no Property, and by that means getting a Horse delivered to him, this is a felonious Act, so is getting Goods out of a House upon an Ejectment, where a Man hath no Title. *Sid.* 254.

A legal Process  
to get Goods  
fraudulently,  
Felony.

Where a Felon is convicted at the Prosecution of the robbed, or Owner of the Goods, the Justices have

Where Resti-  
tution is to be  
made.

Power to award Restitution of the Goods stolen. *per Stat. 21 H. 8. c. 11.*

To destroy or kill Sheep in the Night-time, is Felony, *Stat. 22 & 23 Car. 2. c. 7.* and transporting Sheep beyond Sea, first Offence, Forfeiture of Goods, Imprisonment for one Year, &c. and the second Offence Felony. *per Stat. 8 Eliz. c. 3.*

Taking Fish in a Trunk or Pond, is Felony; so is taking Swans kept in a Pond, or private River.

And Things which have been *feræ Naturæ*, as Conies, Deer, Partridges, Pheasants, &c. if made tame are personal Goods, and 'tis Felony to steal them; so it is in taking young Hawks, or Pidgeons in their Nests, where a Man hath a Property in them; so of Geese, Ducks, Turkeys, &c. *3 Inst. 110.*

Whether Feme Covert excused of Felony.

If a Feme Covert commit Felony by the Command of her Husband, and both are concerned in the same Felony, the Wife is excused; but 'tis no Excuse in a Servant to say he did it by the Order of his Master; and if a Woman commit Murder by the Consent of her Husband, 'tis Felony. *Kel. Rep. 31.*

Cheapning Goods in a Shop, and then running away with them, is Felony. *Raym. 275.*

So Carrier and Porter disposing of Goods delivered them to carry, guilty of Felony. *Blac. 114. Keel. 82, 83.*

So if a Shepherd steal Sheep, or a Butler Plate, or Carrier Goods, tho' delivered them. *Black. 115.*

So if a Silk-Thrower imbezil Silk delivered him work. *Kel. 35.*

But if a Wife alone steal Goods, or receive stolen Goods, or a Felon into her House, or lock up Goods in a Chest, knowing them to be stolen, and her Husband is not privy to it, this is Felony in the Wife. *Paf. 15. E. 2.*

A Feme Covert can't steal her Husband's Goods, but if she is taken away with them against his Consent; 'tis Felony; so 'tis if she deliver the Goods of her Husband to an Adulterer, this is Felony in her. *3 Inst. 110.*

Felonies done in one Reign may be prosecuted in another.

When Felonies are committed in the Reign of one King, the Prosecution may be in the Reign of another; and where Felonies are committed in one County, and the Offender is taken in another, he may be imprisoned where taken, and removed, to be prosecuted where the Fact was done: But if he carry the Goods which he hath stolen with him, 'tis Felony in every County where they are carried. *Br. Coron. 140. 7 C.* *Bulwer's Case.*

If a Man feloniously stricken in one County, and afterwards die in another County, or where Goods are stolen in one County, and carried into another County, or where any Murder or Felony are committed in one County, and other Persons shall be accessary in any other County, an Indictment found against such Accessary in the County where such Offence of Accessary shall be committed, shall be good, and the *Custos Rotulorum* of the other County shall certify, under his Hand and Seal, to the Justices of Oyer and Terminer or Gaol-delivery, whether the Principal be convicted or discharged of the said Felony, &c. that they may proceed as if done in the said County.

Officers may break open an House to take a Felon, or any other suspected thereof; and if an Officer hath a Warrant to take a Felon, who is killed in resisting, it is not Felony in the Officer; but if the Officer is killed by Murder. *Dalt. 98, 289. Cr. fel. 27.*

For the more effectual Apprehending of Felons by Statute 10 *Geo. II. W. 3. c. 3.* it is enacted, That where any Person shall apprehend a Felon for stealing anything to the Value of 5*s.* out of a Coach-house, Stable, Warehouse, either in the Day-time or in the Night, and the Offender shall be convicted thereof, such Apprehender shall have a Certificate under the Hand of the Judge before whom such Conviction was, setting forth the same, and within what Parish the Felony was committed, and the Person so taking or discovering the Felon; and if there are many Persons concerned, the Certificate is to be divided into Shares. This Certificate may be assigned once and no more; but Persons having made use of such Exemption shall not then assign over the said Certificate; and the original Proprietor, or his Assignee, shall be discharged of all Parish Duties in the Parish and Ward wherein such Felony shall be committed. It must be enrolled by the Clerk of the Peace of that County in which it shall be granted.

Apprehender of Felons shall have a Certificate, excusing him from all Parish and Ward Duties, &c.

And if a Person happen to be killed in taking a Felon, he that has Right to his personal Estate shall have the Certificate.

By Stat. of 23 *Hen. 8. cap. 1.* Clergy is taken away from Principals and Accessaries in Robbery: And by Stat. of 25 *H. 8. c. 3.* Clergy was taken away from those who were found guilty in any County of stealing Goods, if it appear to the Judge that he ought not to give Clergy, if he had been tried in the County where the Fact was committed.



A Man committed a Robbery in *Gloucestershire*, and fled into *Oxfordshire*, where the Goods were taken upon him, and there he was indicted only for Felony, and found guilty to the Value of 10*d.* and it appearing to the Court, that he had robbed the Person in the Highway, the Question was, Whether he should be hanged by the Statute of 25 *Hen. 8. c. 3.* or only whipped for Petit Larceny? and resolved by all the Judges, that he should be only whipped; because the Statute extends only to such who shall demand their Clergy, and says, that it shall be denied, if upon Examination it appear that there was a Robbery committed; but here he is found guilty of Larceny only, and so need not demand his Clergy. *Moor 550. Anno 31 Eliz.*

If the Owner of Goods stolen, after he hath made Complaint to a Justice or to a Constable, shall take the Felon and the Goods upon an Hue and Cry, or otherwise, and shall then take his Goods, or compound with the Felon, or consent to his Escape, this shall make him accessary after the Fact: But if, before Complaint made to a Justice in Pursuit he retaketh the Goods, and suffereth the Felon to escape, this is a Misdemeanor only, for which he may be fined. *Dalt. 400. Lamb. 285.*

If a Principal be acquitted or convicted of Manslaughter, or in his own Defence, or is admitted to Clergy before Attainder, or is pardoned, or dieth, the Accessary is acquitted; but this must be before Attainder, or the Accessary shall be arraigned; and Acquittal of one Accessary charges the rest. *Raym. 477. Dalt. 359.*

Where Principal and Accessary may be tried by the same Jury.

If an erroneous Judgment be given against the Principal, yet the Accessary shall be tried; and if both Principal, and Accessary plead to the same Felony, they may be tried by one Jury; but Judgment must first be had against the Principal, and the Jury must acquit the Accessary if they find the Principal not guilty. *Dalt. 359. Cro. Car. 409.* And in Case the Principal doth not appear, or shall appear and stand mute, the Accessary may not be tried; and if he is not attainted the Accessary shall not be outlawed.

If a Man is convicted of Felony, or stands mute or challenges above twenty Jurors, it shall be lawful to proceed against the Accessary, notwithstanding the Principal had his Clergy, was pardoned, or otherwise delivered before Attainder. And every Accessary shall suffer the same Punishment, if convicted, or stand mute, or challenge above twenty Persons, as he should have suffered if Principal had been attainted, by Stat. 1 *Ann. c. 9.*

If any Person shall commit Burglary, House-breaking, or Felony in stealing Horses, or any Money, Wares, or Goods, and being out of Prison shall discover two more, who have committed such Felony, or cause two more to be discovered, apprehended, and convicted, such Discoverer shall have the King's Pardon, which shall be a good Bar to any Appeal to be brought for the same.

10 & 11 W. 3. c. 23.

The Judge or Justices, before whom the Party shall be convicted of Theft or Larceny, for which the Benefit of Clergy is allowed, may commit him to the House of Correction, or publick Work-house, there to be kept without Bail, not less than six Months, nor above two Years, from the Time of such Conviction, and to work all that Time, or be whipped; and if such Person escapes, and is retaken, two Justices of Peace, (*Quorum unus*) where he was retaken, may re-mand him to the House of Correction, there to remain without Bail, not less than a Twelvemonth, and not exceeding four Years, to be accounted from such Retaking: And if the Keeper of the House of Correction shall not keep him to hard Labour, and correct him, then Proof thereof being made by Oath of one Witness before a Judge of Assize, he may remove him from his Office. 5 Ann. c. 6.

Judge may commit Convicts of Felony to House of Correction.

If any one apprehend one guilty of Burglary, or Felonious Breaking and Entering an House in the Day-time, and shall prosecute him to Conviction, he shall, beside the Reward given by the Stat. 10 W. c. 3. receive the Sum of 40*l.* to be paid by the Sheriff within one Month after such Conviction, upon tendering a Certificate signed by the Judge before whom the Offender was convicted. *Ibid.*

Taker of Felon shall have 40*l.* Reward, and the Judge to settle the Proportions in Case of Dispute.

On a Dispute between the Takers of a Felon, the Judge has Power to proportion the Reward by his Certificate. And if the Sheriff does not pay the said Sum in the Time aforesaid, then he forfeits to the Party grieved double the Sum he ought to have paid, to be recovered by Action of Debt, &c. with treble Costs. *Ibid.*

And if any Person shall be killed in endeavouring to take such Felon, then his Executor or Administrator, on Certificate from the Judge of Assize, or the two next Justices of the Peace, that the Person was so killed, shall receive the 40*l.* as aforesaid.

The 40*l.* the Sheriff may deduct in his Accounts, but not the 80*l.* or treble Costs; and if he have not enough of the King's Money in his Hands, then he shall be repaid by the Treasury, on Certificate from the Clerk of the Pipe. *Ibid.*

If

If a Person out of Prison discover two of his Accomplices, he shall have his Pardon. N. B. Witnesses for Prisoners to give Evidence on Oath. Buyers of stolen Goods, knowing them to be stolen, to suffer Death.

Felony without Clergy, to counterfeit Exchequer Bills, &c.

Officer may kill Felon escaping.

Persons convicted of Felony in a Dwelling-house in the Day-time to the Value of 5 s.

If any Person out of Prison shall discover two House-breakers, so as they shall be convicted, he shall have the like Reward of 40 l. and all other Advantages which such Taker or Prosecutor is entitled unto, and shall likewise have a Pardon, which shall be a Bar to an Appeal. *Ibid.*

He who buys stolen Goods, knowing the same to be stolen, or who shall receive or conceal any Burglar, Felon or Thief, knowing them to be so, shall be adjudged Accessary to the Fact, and being convicted shall suffer Death. But if the principal Felon cannot be taken, then the Buyer or Receiver of the Goods which he stole shall be prosecuted only for a Misdemeanor, and fined and imprisoned, or suffer any other Corporal Punishment as the Court shall inflict, tho' the principal Felon is not convicted; and this shall exempt the Accessary from any farther Punishment, if it shall happen that the Principal should afterwards be convicted. *Ibid.*

'Tis Felony without Benefit of Clergy, to forge or counterfeit any Exchequer Bill, or any Indorsement thereon, or to tender any such Bill in Payment, or demand to have the same exchanged for ready Money by the Bank of England, or any Receiver or Collector, knowing the same to be forged or counterfeited with an Intent to deceive any Person.

If a Felon escape from an Officer by Force, and he cannot otherwise retake him, he may be killed, and the Officer will be justified by his Authority.

Cutting Corn, and carrying it away at the same Time, is no Felony, but only Trespass; but if it is laid aside when cut, and afterwards carried away, 'tis Felony.

If a Felon be brought before a Justice upon Suspicion, where a Felony is committed, tho' it appear he is not guilty, yet he is not to be discharged without a Trial.

Persons convicted of feloniously taking away in the Day-time Money, Goods, or Chattels of the Value of 5 s. in any Dwelling-house, or Out-house belonging and used to and with any Dwelling-house, tho' no Person be in the said House, or, &c. at the Time of such Felony committed, shall not have their Clergy. 39 Eliz. c. 15. 11 Co. 36.

Any Person or Accessary robbing another, or taking away any Goods, &c. from a Dwelling-house, or that shall break any Dwelling-house, Shop, or Warehouse in the Day-time, and feloniously take away Money, &c. to the Value of 5 s. tho' no Person be therein, being convicted, or being indicted, shall stand mute, or



not directly answer to the Indictment, or shall challenge above twenty Persons of the Jury, shall not have Clergy.

3 & 4 W. & M. c. 9.

Highway-man's Horse, Money, &c. shall belong to the Apprehender, provided they were not feloniously taken and challenged. Felon out of Prison discovering two others, so as they may be convicted, shall have Pardon.

4 & 5 W. & M. c. 8.

Note ; The Hundred shall not be responsible for Robberies on the Lord's Day, but fresh Suit shall be made after the Offender. 29 Car. 2. c. 7.

Persons after Pardon for Felony shall be remanded back to Gaol, there to remain till they can find two Sureties to enter into Recognizance for good Behaviour for seven Years.

5 & 6 W. & M. c. 13.

Any Person, by Night or Day, feloniously taking any Goods, Wares, or Merchandizes, of the Value of 5 s. out of any Shop, Ware-house, Coach-house, or Stable, tho' such Shop, &c. be not actually broke open, and tho' the Owners of such Goods, &c. be or be not in such Shop, &c. to be put in Fear, or shall assist, hire, or command any Person to commit such Offence, being indicted shall stand mute, or not directly answer to the Indictment, or shall challenge above twenty-three Persons of the Jury, shall be debarred the Benefit of Clergy. 10 & 11 W.

Persons committing Felony in Out-houses to the Value of 5 s. no Clergy.

3. c. 23.

Captain, Master, or Mariner, &c. wilfully casting away, burning, or otherwise destroying the Ship to which he belongs, or procuring the same to be done, to the Prejudice of the Owner, shall suffer Death as a Felon. Offences committed at Sea may be tried in any County of England.

Mariners wilfully casting away Ships.

N. B. If any Thing be made Felony by Statute, the Justices of Peace cannot enquire of it, unless they are named ; neither are they comprehended under the general Words of Justices of Oyer and Terminer, nor can they try such as are indicted of Felony before the Justices of Gaol-Delivery, or of Oyer and Terminer. Lamb. 530.

Justices of Peace not comprehended under the general Words of Justices of Oyer and Terminer.

Note ; That in Case of Treason or Felony, the Party accused may require reasonable Time to answer any Interrogatories, and having answered ought to have Copies of his Examination, if he desire it. Co. Inst. Part 2. p. 51. The Cases of Just. Richil, 1 H. 4. and the Lord Carew, 16 Jac. 1.

Justices of Middlesex may enquire and determine of Murder, and Felonies within the Verge, for their Authority is throughout the whole County. Blac. 118.

N. B.

N. B. Where any Statute doth specially give Authority to any other distinct Court, or to other Justices or Commissioners, (leaving out the Justices of Peace) to inquire of, hear, and determine, or to try Felons, &c. there the Justices of the Peace at their Sessions cannot inquire thereof, &c. *Dalt.* 74.

It is Felony to break Prison by any Person there in Custody for Felony. 1 *Ed.* 2. *De frang. pris.* 2 *Inst.* 589.

He is such a Prisoner that is under Arrest, whether without the Prison or within. *Dyer* 99. And if any such Prisoner make his Escape, this is Breaking the Prison within the Act. 1 *Ed.* 3. 17 *Co.* 2 *Inst.* 589.

Though if the Prison be on Fire by Accident, if any Prisoner therein, for saving himself, break the Prison, this is no Felony, but it is an Act excusable by the Law of Nature. *Plowd. fol.* 13. b.

If a Stranger break the Prison, or make a Rescue, whereby a Prisoner for Felony makes his Escape, this is Felony both in the Prisoner and Stranger. 1 *H.* 7. 6. 1 *Ed.* 3. 17. *Dyer* 99. So it is of rescuing one going to Execution.

If a Justice of Peace deliver a Prisoner for Felony without Bail, this is Felony; but if he bail one who is not bailable, this is only a negligent Escape. *Ibid.* 97.

Multiplication of Gold or Silver, or to practise that Art, is Felony. 5 *H.* 4. 4. *Dyer* 18. *Plowd.* 105. This Act is repealed by 1 *W. & M. c.* 30.

If a Man steal Goods, and then another stealeth them from him, the Owner may charge either of them with the Felony. 13 *Ed.* 4. 4 *H.* 7.

If a Man deliver Cloth to a Taylor, to make a Garment, and it be stolen from him, the Offender may be charged for the same, either at the Owner's or Taylor's Suit. *Cro.* 70.

If a Felon break from those who are leading him to Gaol, if they cannot otherwise take him, he may be killed; for their Authority excuses them. See *Co. Pl. Cr.* 221.

If a Husband kill a Man in the Act of Adultery with his Wife, he is only Guilty of Manslaughter, the Provocation being exceeding great, and without Malice premeditated. *Mich.* 23 *Car.* 2. 1 *Vent.* 158.

In Petty Larceny the Offender shall be punished at the Discretion of the Justices, and shall forfeit his Goods, but not suffer Death.

If a Servant imbezils his Master's Goods, he having neither general or special Property in them, it is Felony. *Mich.*

Husband killing a Man in the Act of Adultery with his Wife.

*Mich. 29 & 30 Eliz. Owen's Rep. 52. Blis versus Holman. Moor's Rep. 248. Pl. 392. S. P.*

A Man may be indicted for stealing Goods out of a Chapel, calling them in the Indictment *Bona Capellæ*, out of a Parish Church *Bona Parochianorum*. *Mich. 7 Ed. 4.*

If a Man be pursued as a Felon, and he flies, and waves his own Goods, they are forfeited as much as if they had been stolen. *57 H. 8. Br. New Cases, fol. 69. a. Pl. 305.*

A Man is arraigned of Felony, and acquitted, but it is found that he fled for the Felony, he shall not lose his Goods which he had at the Time of his Flying, but at the Time of his Acquittal. *3 Ed. 3. Goldsb. Rep. 135. Pl. 35.*

By the Law at this Day, under the Word (*Felony*) in Commissions is included Petit Treason, Murder, Homicide, Burning of Houses, Burglary, Robbery, Rape, &c. Chance-Medley, *Se Defendendo*, and Petit Larceny. *1 Co. Inst. fol. 391. Mar. Rep. 214.*

It was held, that where Entrance into the House is gain'd by Fraud, with an Intent to rob and to break open Doors in the Night-time, was Burglary within the Reason of *Far's Case* at the Sessions at the *Old-Baily*, *Oct. 10. 1666. 18 Car. 2. Kelynge's Rep. 62, 63. Thomas Caffy and John Cotter's Case.*

*A. B.* was indicted for breaking open a Chamber in *Somerset-house*, and the Indictment laid it to be *Dom' Mansional'* of the Person who lodged in it; it was agreed by Chief Justice *Bridgman* and *Kelynge*, that the Indictment was not good, because all *Somerset-house* is one intire House; so for *Whiteball*, and differs from the Case of the Inns of Court, where every Gentleman hath a several Interest, and therefore there every several Chamber is *Dom' Mansional'* of the Person who hath the Interest. *14 Oct. 14 Car. 2. at Newgate Sessions. Kelynge's Rep. 27. Henry Burges's Case.*

*E. P.* was indicted for Murder, and while he was in the Place where the Prisoners used to stand at the Gaol-Delivery, *J. C.* being in very good Cloaths, went in thither, under Colour to see him, and watching the Time when the Keepers were busy, he open'd the little Door and went out, and *E. P.* follow'd him, and the Keeper of the outward Door, not knowing them, open'd that to them, and they both went together out of the Yard; but they were presently followed and taken by the Keepers, and *J. C.* was indicted for Felony; and upon the Evidence it was sworn, that after they were taken *J. C.* said

Case of *E. P.* who procur'd his Friend to escape.



said he had done nothing but what he ought to do, to help away his Friend, who was in Danger of his Life; and on this Evidence he was found Guilty of the Felony, 3 April 1665. 17 Car. 2. at the Old Baily, before Chief Justice Hyde, Judge Kelynge, and Recorder Wyldé. Kelynge's Rep. 45.

Where a Servant receives his Master's Money, due on an Obligation.

If a Servant receives Money upon an Obligation, or upon Sale of Wares, and goes away with the Money, not Felony within the Statute 21 H. 8. cap. 7. because he had not the Money by the Delivery of his Master. But if he had the Money by the Delivery of his Master, or of another Servant of his Master's, and goes away with it, so as it be to the Value of 40s. this is Felony; but not if he goes away with a Bond. Resolved Mich. 25 H. Dyer's Rep. 5. Pl. 4.

On Stat. 21 H. 8. c. 7. it was held, first, That it extends only to such as were Servants both at the Time of the Delivery and Stealing of the Goods; secondly, It does extend only to Goods delivered as to be kept, and not casual Receipts. Black. 128.

What makes Felony on 1 H. 7. c. 7.

K. was indicted upon 1 H. 7. cap. 7. for hunting in one of the King's Parks by Night: The Indictment was 1st, For hunting and killing a Deer at Eleven of the Clock at Night. 2dly, For that he being examined before a Justice of Peace denied it. Montague, Chief Justice, said, That there are four Things requisite upon this Statute to make it Felony. 1. Information must be given of this Offence to a Justice of Peace. 2. He must make out his Warrant. 3. He must examine concerning the Offence. 4. The Offender must deny it. Mich. 17 Jac. 1. 2 Roll's Rep. 133. Manklen's Case.

Though the Offence of Hunting in a Park be made Felony, yet it may be made but a Trespass if the Party pleaseth. Mich. 33 H. 8. Dyer, fol. 50. a. Co. 3 Inst. 78.

Case of E. and F. who robbed a Chamber in the Temple.

E. and F. were indicted, for that they in the Day-time broke open *Domum Mansionalem* of H. A. in the Temple, no Person being therein, and stole 40s. E. went up a Ladder, enter'd the Chamber of H. A. and took away the Money, and F. held the Ladder, and saw E. get into the Chamber, and was assisting and helping him, and took Part of the Money; adjudged Felony without Clergy in E. within Statute 39 Eliz. cap. 15. but not in F. and that Chambers in the Inns of Court and Chancery are Dwelling-houses within the Act of Parliament. Trin. 13 Car. 1. Cro. Car. Evans and Finch's Case. Jones 394.

It is not Felony within the Intent of Statute 3 H. 7. 2. made against stealing Maid, Wife or Widow, to take them away, unless Marriage or carnal Copulation follows. Resolved 36 Eliz. 12 Co. Lit. 20, 21. 1 And. rep. 115. Pl. 160. Trin. 25 Jac. 1. Hutton's Rep. 2. in 3 H. 7. c. 2. 25 Eliz. Savil's Rep. 59. Pl. 127. Agreed by the Judges.

Where the Taking of a Woman is against her Will, though she afterwards consents to be married, yet it is Felony; and though it be not a Marriage *de jure*, because the Woman is in Fear, and knows not what she does; yet it is a Marriage *de facto*, and Felony within the Statute. So resolved Mich. B. R. 13 Car. 1. Cro. car. 482, 485, 488, 492. Fulwood's Case. Hob. 182.

J. B. having but one Son and one Daughter, and being worth above 5000 l. E. M. caused her to be altered from her Father's House in Southwark down the Thames to see a Ship; and having her so Aboard, afterwards by Force and Threats carried her into Suffolk, and there married her; this was adjudged no Felony, because her Father had a Son; and to make it Felony the Woman must be Maid, Widow or Wife, that has Substance in Goods or Lands, or is Heir Apparent. So resolved, Hob. Rep. 182. Burton versus Morris.

If any Person forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the Forging or Counterfeiting any Letter of Attorney, or other Authority or Instrument, to transfer, sign, sell or convey any Share in any Capital Stock and of any Body politick or corporate, established by Act of Parliament; or to receive any Annuity or Dividend, or shall demand or endeavour to obtain any Share of Stock transferred, or Annuities, or Dividends to be received by Virtue of such forged Letter of Attorney, &c. shall personate any real Proprietors, and thereby transfer or endeavour to transfer the Stock, or to receive the money for the same, every such Person being thereof convicted, shall suffer Death as a Felon. 8 Geo. 1. c. 22.

If one conceal a Felony, it is Misprision of Felony, Misprision of which a Man is fineable; for every Man is bound, as much as he may, to prevent and hinder such Evils; and therefore if one stand by, and look on whilst a Man is murdered, to seize the Murderer, he may be indicted, and fined for it. And so if he seize him, and after let him escape.

There must be Marriage or carnal Copulation, to make it Felony within 3 H. 7. c. 2.

But a Marriage *de facto* sufficient.

Woman must have Substance in Goods or Lands, or be Heir apparent.

Felony to forge any Letter of Attorney to transfer Stock, or to receive Dividends, &c.

*An Information against a Felon.*

The Information of *A. B.* of, &c. taken on Oath  
this Day of, &c. before, &c.

Essex, ff. **T**HIS Informant saith, that on, &c. last  
past, about, &c. at Night, as he was going  
with a Parcel of Goods, viz. &c. from his House, situated  
&c. to, &c. C. D. of, &c. did in a violent Manner  
seize him the said *A. B.* and by Force take away from him  
the Goods aforesaid, and when he had so stolen the said  
Goods, made his Escape with the same.

**A Warrant to search for a Felon, and  
to raise Hue and Cry, &c.**

Oxon. ff. **W**Hereas *A. B.* of, &c. hath this Day  
complained unto me *B. C.* Esq; one  
of his Majesty's Justices of Peace for the County aforesaid  
that upon Friday the Second Day of February last,  
at Night, he was robbed of, &c. and other Things, and that  
he hath great Cause to suspect *J. N.* an idle Person, [he  
describeth his Person, Cloaths and Age] These are therefore  
to require you, and each of you to search diligently within  
your Precincts for the said *J. N.* and likewise to make Hue  
and Cry after him, from Town to Town, and from one  
County to another, as well by Horsemen as Footmen, and  
you shall find the said *J. N.* that then you apprehend him  
and carry him before some Justice of the Peace for the  
County. And hereof fail not. Given, &c.

**A Warrant to search for stolen Goods**

2 & 3 P. & M. Essex, ff. **W**Hereas I am informed by *A. B.* of, &c.  
that, &c. was lately stolen and carried  
away from off the Lands of the said *A. B.* in, &c. contrary  
to the Statute in that Case made and provided: These are  
therefore in his Majesty's Name to require you to enter  
into, and search the Houses, Out-houses, or any other  
Places of such Persons whom you shall justly suspect to have  
taken the same: And if you find any such, &c. that then  
you apprehend the Person or Persons suspected for taking the  
same, and those in whose Houses, Out-houses, or other Places  
wherein it shall be found, and bring them before me, or  
some other of his Majesty's Justices of the Peace for the  
County aforesaid, that they may be proceeded against accord-  
ing to Law. Given, &c.



A Warrant to apprehend a Felon.

Ex, J. **W** Hereas T. P. of, &c. hath this present Day made Oath before me R. B. Esq; of his Majesty's Justices of the Peace for the said County, and thereby charged J. O. of, &c. with the felonious taking, &c. These are therefore to command you to apprehend the said J. O. and to bring him before me, or some other of his Majesty's Justices of the Peace for this County, to be examined concerning the Premises with which he is charged; and hereof fail not. Given, &c.

One Justice.  
1 R. 3. c. 3.  
21 Ja. 1. c. 26.  
2 Rolls 226,  
245.

A Commitment of a Felon.

**W** Hereas T. C. of, &c. hath this Day been convicted before me by the Oath of, &c. of a Felony lately committed in the Parish of, &c. wherein the said T. C. stole several Parcels of Goods, (viz.) &c. from, &c. and the said T. C. on his Examination saying nothing material to clear himself from the said Felony (a): These are therefore to command you to convey the said T. C. to the Common Gaol of, &c. aforesaid, and to deliver him to the Keeper thereof; hereby requiring you the said Keeper to receive the Body of the said T. C. into your Gaol, and that you do safely keep him in your said Gaol and Custody until he shall be discharged from thence by due Course of Law; and hereof fail not at your Perils. Given, &c.

(a) Or having confessed it, as the Case is, or being charged.

A Warrant to apprehend one for stealing a Promissory Note.

Ex, J. **W** Hereas A. B. of C. in the County of Essex, Butcher, was this Day charged before me, on the Oath of C. D. of, &c. Gent. with feloniously taking from him one Promissory Note, for the Payment of Twelve Pounds to him the said C. D. by E. F. Esq; or Order (one Exchequer Note, Bank Bill or Bond, &c.) These are therefore in his Majesty's Name to require and authorise you, and either of you, to apprehend the said A. B. and bring him before me, or some other of his Majesty's Justices of the Peace, to be examined concerning the Premises, and to be further dealt with according to Law. Given under my Hand and Seal, &c.

2 Geo. 2.

## Mittimus for forging a Bond.

2 Geo. 2.

Essex, ss. **W** Hereas A. B. of C. in the County of Essex Yeoman, was this Day brought before me and charged by the Oath of C. D. of C. aforesaid, with forging a Bond of 100 l. for the Payment of 50 l. him the said A. B. by E. F. of L. in the said County Gent. (Deed, Will, Writing Obligatory, Bill of Exchange Promissory Note, &c.) contrary to the Statutes in that behalf made and provided: These are therefore in his Majesty's Name to require and authorise you to take the said A. B. and to convey him to the Gaol of the County aforesaid: And you the said Keeper are hereby required to receive the said A. B. and him to safely keep in your Custody until he shall be discharged by due Course of Law. Given under my Hand and Seal, &c.

## A Condition of a Recognisance to appear and give Evidence against a Felon.

(a) Or at the next Assises.

Essex, ss. **T** HE Condition of this Recognisance is such, That if the said J. H. shall personally appear at the next General Quarter (a) Sessions of the Peace to be held at M. for the East Part of the said County of Essex, and then and there give such Evidence as he knoweth against, &c. of and concerning his feloniously stealing Silver Spoons, the Goods of R. B. and do not depart therefrom without Leave of the Court, that then, &c.

If there be no direct Charge against the Person, but only Suspicion, then you bind the Person in a Recognisance with a Condition to appear at the Assises or Sessions, as followeth;

## The Condition for a suspected Person to appear, &amp;c.

**T** HE Condition of this Recognisance is such, That the above-bounden T. P. shall personally appear, &c. and do then, and there answer all such Matters and Things which shall be objected against him, being suspected to have feloniously taken the Goods of, &c. and do not depart therefrom without Leave of the Court, that then this Recognisance shall be void, &c.

An Indictment for Buggery.

Middlesex, *ss.* **T**HE Jurors, &c. do present, That H. S. late of London, Esquire, not having the Fear of God before his Eyes, nor respecting the Order of Nature, but moved and seduced by the Instigation of the Devil, on the 12th Day of May, (in such a Year) at the Parish of St. Andrews, in High Holborn, in the County aforesaid, (to wit, in the Dwelling-house of one M.) there with Force and Arms, made an Assault upon one R. B. a Young Man about sixteen Years of Age, and then and there wickedly, diabolically, and against the Order of Nature, had a Venereal Affair with the said R. B. and then and there carnally knew the said R. and then and there wickedly, diabolically and against Nature, committed and perpetrated that Sodomitical, detestable and abominable Crime of Buggery (not to be named among Christians) to the great Displeasure of God Almighty, and a Scandal to all Humane Kind, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided, &c.

An Indictment for seizing the Goods of a Felon before Conviction.

Middlesex, *ss.* **T**HE Jurors, &c. do present, That one J. O. late of H. in the County of S. Labourer, was taken and arrested for the Suspicion of Felony by him committed, to wit, for that the said J. O. feloniously took and drove away a Horse of the Goods and Chattels of one T. P. and the said J. O. was then and there carried before H. P. Esq; one of the Justices of our said Sovereign Lord the King, assigned to keep the Peace in the said County, and was by the precept of the same Justice duly committed to the Gaol of the County aforesaid, and a certain Person, to wit, J. S. (such a Place) and T. R. of (such a Place) then and there drove away five Cows, two Horses, &c. of the Goods and Chattels of the said J. O. so arrested for the Felony aforesaid, before he was convicted of the said Felony, against the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

By the Statute of 1 R. 3. c. 3. If Goods of a suspected Person be seized on before Conviction, the Seizor forfeits to the Party grieved double the Value to be recovered by Action of Debt. 1 Rep. 171. See 1 Lut. 132. a Declaration on this Statute. Raym. 414.



## A Commitment for Felony relating to the Stocks.

8 Geo. c. 22.

**W** Hereas it has been duly proved before me by the Oath of, &c. that A. B. of, &c. hath been guilty of personating C. D. Proprietor of 100 l. South-Sea Stock, and of endeavouring to transfer the said Stock, and to receive the Money for the same, which by a late Act of Parliament is made Felony without Benefit of Clergy: These are therefore to command you to convey the said A. B. to the common Gaol of, &c. and deliver him to the Keeper thereof; Hereby also requiring you the said Keeper to receive the said A. B. into your Gaol, and him there safely to keep until he shall be discharged by due Course of Law. Given, &c.

This Statute of 1 Rich. 3. c. 3. above mentioned, but in Affirmance of the Common Law, for there is no Writ to Deliver the Goods upon Security given, and grounded upon this Reason; That the Felon may have something to support himself in Prison: But the Statute doth not extend to a Person at large; for in such Case the Officer may seize them by the Statute of 25 Ed. 3. c. 14. Raym. 414.

Godb. 206.

So that at Common Law, such Goods are not forfeited till Conviction, and till then the Party ought to have the Benefit of them to maintain himself; 'tis true, they may be put *in salva Custodia*, but cannot be seized for the Use of the King, till the Party is convicted.

If the Felon doth not fly, but is apprehended with the Goods, the Owner shall have them; if he flies and fresh Pursuit is made, and he waves the Goods, and they are taken up and carried away before the Owner comes, the Property is altered by the Seizure, and vested in the Lord: But if the Pursuit was always in View of the Felon 'tis otherwise. *Het.* 65.

A Liberate to Deliver a Prisoner committed for Felony.

W. P. and E. P. Esqrs; two of the Justices, &c.  
to the Keeper of His Majesty's Gaol, &c.  
Greeting.

Forasmuch as A. B. Labourer, hath before us found sufficient Mainprise to appear before the Justices of Two Justices, 3 E. 1. c. 9. Crompt 238. Lambert 348.  
Gaol-Delivery, at the next general Gaol-delivery to be holden in the said County, there to answer to such Things as shall be shewen on the behalf of our Sovereign Lord the King, objected against him, and namely to the felonious Taking of two Sheep, for the Suspicion whereof he was taken and committed to our said Gaol) we command you, on the behalf of our said Sovereign Lord the King, That, if the said A. B. do remain in the said Gaol for the said Cause, and none other, then you forbear to grieve, or to detain him any longer, but that you deliver him thence, and suffer him to go at large, and upon the Pain which will fall therein. Given, &c.

An Information was brought against an Attorney and another, for conspiring to take away a Man's Life, by accusing him of Felony: He was acquitted of the Accusation on an Indictment preferred, and the Conspiracy being proved against the others, they were both sentenced to stand in the Pillory, lose their Ears, be whipped, and each fined 500*l*. This Sentence was executed on them, 1 Jac. 1. *Miller's Case*.

If a Man be arrested for Felony, his Goods shall not be seized until Attainder or Conviction, upon Pain to forfeit the double Value to the Party grieved; for the Party grieved may sell them *bona fide* for his Maintenance in Prison before Conviction. 1 R. 3. c. 3. *Standf.* 192. Co. 171. b.

After Conviction the Town presently stands charged for the Felon's Goods, (if then in his Possession) and shall answer the impairing of them, except they shew who detained them, and that they could not have Possession of them. And then the Town presently stands charged for them. 12. Cor. 3. 66. *Stamf.* 193, 194. 31 *Ed.* 3. 35.

If a Feme Covert steal Goods by the Compulsion of her Husband, 'tis not Felony in her, because of the Necessity of Obedience; but if it was at his Persuasion, and he not present, or without any Constraint from him, she is then guilty of Felony, and her Husband Accessary. Feme covert excused in Theft, but not in Treason and Murder.

But this Privilege doth not prevail in Cases of Treason and Murder, because of the Greatness of those Offences.

Of Pleas to  
Indictments for  
Felonv.

There are three Sorts of Pleas to Indictments for Felonv. { 1. Demurrer.  
2. In Abatement or Bar.  
3. The general Issue.

If the Defendant demur, he ought to be very certain, that the Indictment is faulty; for if it be adjudged good, he shall have Judgment and Execution, because by the Demurrer the Fact is confessed as laid in the Indictment.

2. In Abatement. { 1. *Misnomer* in the Surname.  
2. *Misnomer* in the Christian Name.

In the Surname 'tis a good Plea in Abatement unto an Appeal, but not to an Indictment, but in the Christian Name 'tis a good Plea to an Indictment, but then the Party must confess his true Name, that he may be instantly indicted.

In Bar. { *Auterfoits* acquit  
              { *Auterfoits* convict.

1. *Auterfoits* acquit must always be of the same Felonv, and therefore 'tis no good Plea to an Indictment, or Appeal for another Felonv.

2. It must be always intended of a lawful Acquittal; for if the Indictment or Appeal is insufficient and faulty, and the Defendant is acquitted thereon, he may be indicted again for the same Felonv, unless Judgment is given upon such Indictment or Appeal for another Felonv.

3. An Acquittal on an Indictment is no Plea to an Appeal brought for the same Death, but an Acquittal upon an Indictment, or an Appeal in Cases of Felonv is a good Plea to any other Indictment for the same Felonv.

But then the Appeal must not be erroneous in Substance, nor be brought by a wrong Person.

For Judgment  
in Felonv, &c.  
See Treason.

*Auterfoits* Convict.

{ Of Manlaughter either upon an  
Indictment, or an Appeal, is a  
good Plea to any other Indict-  
ment for the same Crime.



## Feme Covert.

**T**HE Peace may be granted against her, or against an Infant, tho' under fourteen Years old, but then she must not be bound, tho' with her Husband, for the Recognizance will be void as to her ; but she must find Sureties, which if she cannot do, she must be committed.

Feme Covert bound to keep the Peace.

If she commit a Riot or Trespass without her Husband, she may be indicted and fined ; but the Fine shall not be levied on her Husband, but on her after his Death, and she shall be committed, till 'tis paid. *9 Rep. 72. Dr. Husband's Case. 11 Rep. Dr. Forster's Case.*

For Riot or Trespass, she may be fined.

If both steal together, it hath been held that this shall be taken to be the Act of the Husband alone, and that she cannot be so much as Accessary to it, because of her Obedience as aforesaid ; tho' others are of Opinion that Obedience should only extenuate the Crime, for such it is, and if she do consent, she may be indicted.

Where Baron and Feme steal together.

She cannot steal her Husband's Goods ; but if she be taken away with them against his Consent, 'tis Felony in him who takes her ; so 'tis if she deliver her Husband's Goods to an Adulterer, this is Felony in him.

She cannot steal her Husband's Goods.

In an Indictment for selling Ale without License, the Husband must be joined, because he is to pay the Fine.

**Feasant.** See Game.

**Ferrets.** See Game.

## Fine.

**W**HERE a Fine is set by any Statute, in such Case, if the Offender confesses the Indictment or is found guilty, the Court cannot mitigate the Fine ; but if he submit with a Protestation of his Innocence, and throw himself upon the Favour of the Court, *quia noluit placare cum Dom. Rege*, they may then set a less Fine than enjoined by the Statute, &c.

Where a Fine may be mitigated, and where not.

## Fire.

To burn another's House is Felony.

**T**O burn the House of another voluntarily and maliciously, is Felony at Common Law, whether it be done by Night, or by Day ; and it is not necessary that the whole House be burnt ; for if it be set on Fire, and but one Part of it is burnt, yet it is Felony. But a Man may burn a House whereof he is in Possession by Lease, and it is no Felony : But if a Man voluntarily fire his own House held by Lease, which burns his Neighbour's House, this is Felony, though in his own House by reason it was done maliciously to injure his Neighbour and the Event shall be coupled to the Cause. *Cr. Car. 376. Jones 351.*

Church wardens to keep Fire-cocks and Engines, and the Rewards they are to have on coming to Fires.

Church-wardens of every Parish within the Weekly Bills of Mortality, are to make, place, fix, and continue Stop-blocks or Fire-cocks on Mains and Pipes, and to have and to keep in Repair a large Engine Hand Engine and Leather Pipe and Socket, or the like, for the use of the Poor, and the other to the Informer, to be levied by Warrant of two Justices. *6 Ann. c. 31. 7 Ann. c. 17.*

The Turn-cock, whose Water shall first come into the main Pipe when the Plug shall be opened at any Fire, shall be paid 10s. the first Parish Engine in good Order to have 30s. the second 20s. and the third 10s. payable by the Church-wardens, who may assess the Money as they do for the Poor.

If a Servant fire a House through Carelessness, they forfeit 100l.

If any Servant fire any Dwelling-house, or Out-house through Negligence or Carelessness, they shall forfeit 100l. to be levied by Warrant from two Justices, and paid to the Church-wardens to be distributed to the Sufferers by the Fire : And in Case of Default or Refusal they are to be sent to the House of Correction, there to be kept to hard Labour for 18 Months. *6 Ann. c. 31.*

'Tis Felony to set on Fire a Stack of Corn in Northumberland, Cumberland, Westmoreland, or Durham. *23 Car. 2. c. 7.*

No Action can be brought against the Person, in whose House the Fire began.

By Stat. *6 Ann. c. 31.* for the Space of three Years next ensuing, and from thence to the next Sessions of Parliament, no Action shall be brought against any Person in whose House any Fire began, nor any Recompence be made by such Person for any Damage suffered ; and if such Action be brought, the Defendant may plead the General Issue, and give that Act in Evidence.

Evidence, and if he recover, shall have treble Costs.

6 Ann. c. 31.

By Stat. 10 Ann. c. 14. The abovesaid Act which was only for three Years, is made perpetual ; but nothing therein to make void any Contract or Agreement between Landlord and Tenant.

A. maliciously intending to burn only the House of S. thereby burnt the House of L. this is Felony, and he may be indicted, that *ex malitia præcogitata* he burnt the House of L. H. P. C. 85. Co. 11. Rep. fol. 29. a. *Ad. Prullam's Case.*

By Stat. 7 Ann. c. 17. The Rewards to the Turncock and others, shall not be paid without the Approbation and Direction of the Alderman of the Ward where the Fire happened, or of his Deputy, or two Common Council-men of the same Ward ; the several Rewards shall be likewise paid to the Keeper of any other great Engine, who shall bring it in to help to extinguish the Fire, in god Order and compleat tho' it is not a Parish Engine.

Rewards not to be paid without the Direction of Alderman of the Ward.

If the Vestries shall think it necessary to have more than one great Engine, or Hand Engine, they may provide it at the Parish Charge, by an Assessment to be made, as by the former Act, and to be under the same Regulations.

Vestry to make Assessments.

The Vestries may rate and assess such Sums of Money as are necessary to defray the Charge of providing and maintaining the Engines, Stop-blocks, and Fire-cocks, and other Implements and Materials ; and for Payment of the said Rewards ; which Rates being confirmed as the Poor Rates, may be levied in like Manner. See the Act at large.

## A Warrant against Church-wardens for not fixing Stop-blocks.

London, ff. **W** Hereas A. B. and C. D. Church-wardens of the Parish of, &c. have been duly convicted before us of a Default in not placing and fixing of Stop-blocks of Wood with a Plug on the main Pipe belonging to the Water-work in the said Parish of, &c. as the Act of Parliament directs (or in not keeping in Repair a large Engine for the Extinguishing and Prevention of Fire, &c.) whereby they have incurred a Forfeiture of 10l. These are therefore to require you to levy the said Sum of 10l. by Distress and Sale of the Goods of the said Church-wardens ; and

6 Ann. c. 31.



and that you pay one Moiety thereof to, &c. who informed us of the said Offence ; and the other Moiety to the Overseers of the said Parish of, &c. for the Use of the Poor there. Given, &c.

### A Warrant for an Engine Keeper to recover 30 s.

London, ff. **W** Hereas due Proof hath been made on the Day of the Date hereof before us G. D. and F. K. two of His Majesty's Justices of the Peace in and for the said City of London, That C. R. Engine-Keeper, did first bring in a Parish Engine to help to extinguish a Fire, which lately happened in the said Parish, which Engine was then in good Order, and compleat with a Socket, Hose, and Leather Pipe, by Reason whereof the Church-wardens of the said Parish ought to have paid unto the said C. R. the Sum of 30 s. pursuant to the Statute in that Case made and provided, but have hitherto made Default in Payment thereof: These are therefore to require you to levy the said Sum of 30 s. by Distress and Sale of the Goods of the said Church-wardens ; and that you pay the said Sum to the said C. R. and hereof fail not. Given, &c.

### A Warrant to levy the Forfeiture on a Servant's firing a House, or on Default of Payment to send him to the House of Correction,

6 Ann. c. 31.

**W** Hereas A. B. of, &c. hath this Day made Oath before us C. D. and F. G. Esqrs; two of his Majesty's Justices of the Peace for the County aforesaid, that the Dwelling-house of him the said A. B. situate in, &c. aforesaid, was on, &c. last past set on Fire, and burnt down by the Carelesness and Negligence of C. D. his Servant, and the said Crime hath been duly proved before us, by the Depositions of the said A. B. and of, &c. and the said C. D. on his Examination not being able to clear himself from the Charge aforesaid ; but it appeareth plainly against him: These are therefore in His Majesty's Name to command you to levy the Sum of 100 l. on the Goods and Chattels of the said C. D. by Distress and Sale thereof, being forfeited by committing the Crime aforesaid ; and that you do pay and distribute the said Sum of 100 l. when levied, to and amongst the Sufferers by

## Fire. Fish and Fishing.

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the said Fire, according to the Direction of the Act of Parliament in that Behalf made; and if there shall be Distress, and the said C. D. neglect or refuse to pay the same, that then you do convey him the said C. D. to the Gaol aforesaid, and deliver him to the Keeper thereof, hereupon requiring you the said Keeper, the said C. D. safely to keep in your Custody, and at hard Labour, until he shall be discharged by due Course of Law. Given, &c.

### An Indictment for burning a House.

Allex. ff. **T**HE Jurors, &c. do present that J. O. late of H. in the said County, Labourer, on the Second Day of December, in the Eighth Year of the reign of our Sovereign Lord the King, at the Mansion-house of R. B. of H. in the County aforesaid, Gent. (the same House being in the said County) with Force and Arms, between the Hours of Five and Six in the Forenoon of the same Day, came, and with a Candle lighted, which the said J. O. then and there held in his Hand, out of his Malice forethought, set Fire to the said House; whereupon the said House was then and there burnt; and thus the said J. O. on the said Second Day of December, in the Year aforesaid, at H. aforesaid, in the County aforesaid, wilfully, and of his Malice forethought, set on Fire and Burnt the said Dwelling-house, in the Manner and Form aforesaid, against the Peace of our said Sovereign Lord, his Crown and Dignity, &c.

## Fish and Fishing.

Offices of Peace have Power to redress Grievances relating to unlawful Taking and Destroying Fish. If any Person shall take Salmon or Trouts out of Sea, or Pikes shorter than ten Inches, Salmon than six Inches, Trout than eight, and Barbles than twelve Inches; shall use any Engine to take Fish, other than Angle or Net, or a Trammel of two Inches and a Half Mesh, or shall use any Net or Engine to destroy the Spawn or Fry of Fish, he shall forfeit 20s. for each Fish, and also the Net or Engine. Stat. 13 Edw. 1. c. 7. 1 Eliz.

Fish taken of unlawful Sizes, or unlawful Nets used.

By

By Stat. 4 & 5 Ann. c. 21. the Statute 13 Edw. 1. is continued in full Force.

Erecting Weirs to destroy the Spawn of Fish

If any Person shall erect a Weir along the Sea-shore, or in any Haven or Creek, or within five Miles of the Mouth of any Haven or Creek, and shall willingly destroy the Spawn or Fry of Fish, he shall forfeit 10*l.* to be levied by Distress, &c. Stat. 3 Jac. 1. c. 12.

Mesh of Nets used near the Sea to be three Inches and a Half wide.

And if any Person shall fish in any Haven or Creek, or within five Miles of any such, with any Net of a less Mesh than three Inches and a Half between Knot and Knot, or with a Canvas Net, or other Engine, whereby the Spawn or Fry of Fish may be destroyed, he shall forfeit 10*s.* and the Net or Engine. *Ibid.*

Fishing in, or breaking down Fish ponds.

If any Person shall unlawfully break down Fish-ponds, or Fish in them without Licence from the Owner, he shall suffer three Months Imprisonment, and give good Security for his Good Behaviour for seven Years, and the Party grieved may recover treble Damages: But on the Offender's acknowledging his Offence in the Sessions, and paying the Damages, the Justices have Power to release the Good Behaviour. Stat. 5 Eliz. c. 21.

Purloining or packing Pilchards without Leave of Owners.

If any besides Owners, Partners, or Adventurers in Fishing, shall pack up Pilchards in Casks to be sold or transported, (unless bought of such Owners, or with their Leave) he shall forfeit the Value to the King and Informer: And if any shall purloin Pilchards, he shall forfeit treble the Value, or be sent to the House of Correction; and suspicious Persons flocking about Boats, Nets, or Cellars where Pilchards are, being warned to be gone, and refusing, on Complaint to one Justice, shall pay 5*s.* to the Poor, or be put in the Stocks five Hours. 13 & 14 Car. 2. c. 24. and c. 28.

Fishing without Leave in a River or Water.

If any Person shall take or destroy Fish by any Device in any Water or River, or assist therein, without the Consent of the Owner of the River, the Offender shall make such Satisfaction to the Owner, as one Justice shall appoint, not exceeding treble Damages; and shall also pay such Sum as he shall think fit, not exceeding 10*s.* for the Use of the Poor; and in Default of Payment, to be levied by Distress and Sale; and for want of a Distress, the Offender must enter into a Bond with one or more Sureties, in the Penalty of 10*l.* not to offend again in the like Nature, or else he must be committed for any Time not exceeding one Month. Stat. 22 & 23 Car. 2. c. 15.

Destroying the Spawn of Fish in Severn.

Nets for fishing in the River Severn are to have the Mesh two Inches and a Half Square from Knot to Knot under the Penalty of 5*l.* and destroying the Spawn of Fish



Fish between the First of *March*, and the Last of *May*,  
incurs a Forfeiture of 40s. Stat. 30 *Car.* 2. c. 9.

Persons keeping Nets, Angles, Leaps, Pitches, or Nets, Engines,  
other Engine for taking of Fish, other than Makers and &c. seised, and  
sellers of them, and Owners and Occupiers of Rivers or Houses search-  
ed.  
Fishes; such Engines may be seised and kept by the  
Owners of the Rivers, and Fisheries, or such as they  
shall authorise. And one Justice may grant his Warrant  
to search the Houses of Persons not qualified, which  
shall be suspected to have Engines for taking Fish, and to  
seise and destroy the same. Stat. 4 & 5 *W. & M.* c.

Fishmongers, &c. are prohibited from buying any Fishmongers  
Quantity of Fish at *Billingsgate* Market, &c. but what not to ingross  
shall be for their own Sale and Use, under the Penalty of Fish at Bil-  
10l. Stat. 10 & 11 *W.* 3. c. 14. For the Rates of lingsgate,  
Groundage at *Billingsgate*, vide the Act.

Lobsters must not be sold under eight Inches from the  
Peak of the Nose to the End of the Middle Fin of the  
Tail, Forfeiture of 1l. for each Lobster. *Ibid.*

Two Justices residing within five Miles of the Rivers  
in *Hampshire* and *Wiltshire*, &c. have Power to appoint  
Overseers, who being sworn, may take Offenders, &c.  
and destroy their Nets and Engines used contrary to the  
Acts relating to Fishing.

The Offenders for destroying Salmon being convicted Penalty for de-  
upon Oath of one Witness, or Confession before one Ju- stroying Sal-  
stice, shall forfeit for the first Offence, not under 20s. mon.  
nor above 5l. for the second Offence, not under 40s.  
nor above 10l. and as the Offence shall be repeated,  
the Penalty is to be doubled, &c. and distributed one  
Moiety to the Informer, and the other Moiety to the  
Poor of the Parish where the Offence shall be commit-  
ted; and if the Party do not pay the Penalty on De-  
mand, then the Justice may send him to the House of  
Correction for three Months.

And if Salmon shall get into Ditches, &c. of Mea- Salmon in  
ow-Ground within the Time limited by the Act, the Ditches.  
Occupiers of such Grounds shall permit them to pass into  
the Rivers, and not destroy them under the Penalties, *ut*  
*supra.*

Owners and Tenants of Mills in the Counties afore- Millers to keep  
said, shall keep open a Hatch of a Foot Square in the di- open Hatches.  
rect Stream where there is no Wheel, sufficient for the  
Salmon to pass and repass from the 11th of *November* to  
the 31st of *May*, and shall not use any Net, &c. in the  
Hatch during that Time, to take or kill Salmon under  
the like Penalties.

And

And not to lay Pots for destroying Salmon or young Fry.

Lord Mayor and Aldermen, and Justices may hear and determine Offences about Fish and Fishing in their several Jurisdiction.

No Fish caught nor bought of Foreigners to be imported.

Penalty.

And such Owners, &c. of Mills are not to lay Pots for catching of Eels between the First of *January* and the Tenth of *March*, without setting Racks before them to keep out the old Salmon, and after the Tenth of *March*, to the Thirtieth of *May*, they shall not lay any Pot but what shall be wide enough to let the Fry of Salmon pass through to the Sea, and shall not take or keep, or offer to Sale any of the young Fry during that Season, under the Penalties above-mentioned. Stat. 4 & 5 *Ann. c. 21.*

The Lord Mayor and Aldermen of *London*, and the Justices of the Peace of the respective Counties for all Offences in their several Jurisdictions, in wilfully killing or exposing to Sale any Spawn, Fry or Brood of Fish, or Spats of Oysters, or any unwholesome Fish, or in destroying any Fish out of Season, or by exposing such Fish to Sale, or by wilfully buying, using, &c. any Spawn, Fry, &c. or catching Salmon between the Twenty-fourth of *August*, and the Eleventh of *November* in any Year may upon View or Complaint made, examine and determine the same on Oath, and upon Conviction impose a Fine not exceeding 10*l.* nor less than 5*l.* to be levied by Distress and Sale of the Goods of the Offender, unless the Fine be immediately paid, or good Security given to abide the Order of the Court of Conservancy, upon the Conviction by the Lord Mayor, &c. or the Court of Quarter-Sessions upon the Conviction by the Justices, one of them, in Case the Offender shall think fit to appeal to either; and if no Distress can be had, then to be committed for any Time not exceeding two Months, to the House of Correction, without Bail; Penalty to be divided, one Moiety to the Informer, the other to the Lord Mayor, if in his Jurisdiction; if elsewhere, then one Moiety to the Poor of the Parish where the Offence was committed, the other to the Prosecutor. Stat. 9 *Ann. c. 26.*

Masters of Ships or Vessels shall not import any Herring, Cod, Pilchards, Salmon, or Ling, fresh or salted, dried or bloated, nor any Grill, Mackarel, Whiting, Haddocks, Sprats, Coal-fish, Gull-fish, Congers, or any flat Fish, or other fresh Fish, or sell the same in *England*, which shall be taken by, bought of, or received from Foreigners, on Pain of forfeiting 20*l.* to be levied by Distress of the Offender's Goods; and distributed one Moiety to the Informer, and the other to the Poor of the Parish. Conviction to be on Oath of two credible Witnesses, before one or more Justices; and in Default

of Payment, or of a sufficient Distress the Offender to be committed to the common Gaol for twelve Months. 1 Geo. 2. 16.

This Act not to extend to prevent importing Eels, Exception of Stock, Anchovies, Sturgeon, Botargo, or Cavear, Lob- some Fish. sters, and Turbots by Foreigners.

No Nets are to be used on the Sea-Coasts of *England*, Size of Nets to be used on the for the catching any Kind of Fish (except Herrings, Pil- be used on the chards, Sprats or Lavidnian) but such as the Meshes Coast of Eng- thereof are three Inches and a Half from Knot to Knot, land. or which have any false or double Bottom, Cod or Pouch, on Pain of forfeiting 20*l.* and all such Nets.

If any Person shall sell or exchange for other Goods, Selling Fish any Bret or Turbot not 16 Inches in length, Brill or under Size Pearl not 14 Inches, Codlin not 12 Inches, Whiting forfeits 20*s.* not 6 Inches, Bass or Mullet not 12 Inches, Sole not 8 Inches, Plaice or Dab not 8 Inches, or Flounder not 7 Inches in Length, he shall forfeit for every Offence all the Fish to the Poor of the Parish, and the Sum of 20*s.* or in Default be sent to the House of Correction, and there whipt and kept at hard Labour for six Days.

Owners and Proprietors of Rivers in the Counties of *Salmon in Ri- Southampton and Wilts*, and their Servants, and Agents vers in the by this Act, are not to kill Salmon between the First Counties of Day of *August* and the Twelfth of *November*, or hurt Southamton and Wilts. any Salmon by Hawks, Nets, Angles, or otherwise, or expose the same to Sale, under the Penalties in 4 *Ed* 5 *Ann.* c. 21. which Statute as to the Time of catching Salmon is repealed.

Salmon taken in the Rivers *Severn, Dee, Wye, Tame, Salmon taken Vere, Tees, Ribble, Mercy, Dan, Aire, Ouze, Swale, in Severn, Dee, Calder, Wharf, Eure, Derwent and Trent*, are to be from &c. are to be the Eye to the Middle of the Tail eighteen Inches in eighteen Inches length, and whoever shall kill or destroy them under long.

that Size, or hinder them going up the Rivers to spawn, or kill them between the Last Day of *July* and the 1st of *November*, and thereof shall be convicted by Confession or Oath of one or more credible Witnesses, before one or more Justices, shall forfeit 5*l.* for every Of- Penalty if ta- fence, and the Fish taken, and Nets, and Engines, to ken less. be levied by Distress; and for want of Distress, the Of- fender to be sent to the House of Correction, and be kept at hard Labour for three Months, and the Nets and En- gines destroyed.

Salmon sent to *London, &c.* from any of the said Ri- Salmon sent to London must vers, shall not weigh less than six Pounds, any Person weigh six Pounds. buying a Salmon of less Weight, and being thereof con- victed



How the Forfeitures are to be disposed.

Laws about Herring, and Salt Salmon, Fishery, &c.

victed before a Justice, &c. forfeits 5*l.* and the Fish bought.

A Moiety of these Forfeitures to the Informer, the other to the Poor of the Parish, where the Offence was committed, to be levied by a Warrant of a Justice, &c. by Distress, &c. before whom the Conviction was, and for want thereof to be sent to the House of Correction for three Months.

An Appeal lies to the Quarter-Sessions, whose Determination is to be final.

Herrings shall not be sold at Sea before Fishermen come to Land, *Stat. 31 Ed. 3. c. 2.* an Hundred of Herrings shall be an Hundred and Twenty, and a Last Ten Thousand; two Lasts of Shotten Herrings fresh shall be equal in Price with one Last of full Herrings. *31 Ed. 3. c. 2.*

All Persons may buy Herring in the Fair-time at Great Yarmouth openly, and not privily; and a Fisherman may sell his Herring at any Time when he cometh with it. *Stat. 35 Ed. 3.*

Justices of Peace shall be Conservators of the Statutes relating to Fishing, and shall have Power to search all Weirs, and shall have Power to appoint and swear under Conservators.

The Mayor of London shall have like Power in the Thames and Medway. *17 R. 2. c. 9.*

None shall sell or set to Sale any Salmon by Vessel before it be viewed, nor unless the Butt contain 84 Gallons, the Barrel 42 Gallons, and the Half Barrel 21 Gallons well packed, on Pain to forfeit for every Vessel 6*s.* 8*d.*

None shall set any Herring to Sale in Vessel, unless the Barrel contain 32 Gallons, and the Half Barrel and Firkin accordingly: Nor any Eels by Vessel, unless the Barrel contain 42 Gallons, and the other lesser Measures accordingly.

None shall set to Sale any barrelled Fish unless it be well packed, &c.

Head Officers of Corporations, Burroughs, Market Towns, and other Places, shall appoint discreet Persons to search and gauge Vessels of Fish for the Prevention of Deceits. *22 Ed. 4. c. 2.*

By Stat. 11 H. 7. c. 22. the Stat. of 22 Ed. 4. c. 2. confirmed, and the Gauger's, Searcher's and Packer's Fees appointed.

In Pursuance of these Statutes the Lord Mayor of London has from Time to Time appointed a Gauger to inspect, that all Salt-Fish brought into the Port of London

London, be according to the said Acts; which if well executed, would tend so very much to the Benefit and Reputation of the *British* Fishery, both at Home and Abroad: But through some Defects in the said Acts, the said Officer hath not been able to do his Duty, by which Means great Quantities of unsound and unwholsome Fish are both frequently sold in *London*, to the great endangering the Health of the People, and also exported abroad, to the great Loss and Reproach of the *English* Fishery.

If a Fishmonger sell Fish at unreasonable Prices, he is punishable for it by Indictment. *Dalt. p. 80. c. 42. P. 27a. 1.*

Offences against 30 *Car. 2. c. 9.* shall not be punished but by Information or Indictment before the Justices of Assize, and *Nisi Prius*, Oyer and Terminer, and Gaol-Delivery, or the General Sessions of the Peace. *Stat. 30 Car. 2. c. 9.*

## A Warrant to levy the Forfeiture of a Person for Fishing in a River or Pond without Leave.

*Essex, ss.* **W** Hereas A. B. of, &c. hath this Day made 22 & 23 *Car. 2.* Oath, that C. D. of the Parish, &c. on, c. 15. ec. last past, did angle for Fish, and catch several Trouts in the River called, &c. running, &c. now belonging to, and rented by the said A. B. (a) without his Consent, contrary to an Act of Parliament in that Case made: These are therefore in his Majesty's Name, to require you to detain and of the said C. D. the Sum of 7s. 6d. for the Use of the said A. B. as a Satisfaction for the Damage he hath received, and 5s. for the Use of the Poor of the said Parish of, &c. which I do adjudge a sufficient Forfeiture for the Offence aforesaid, according to the Power given to Justices of the Peace for the punishing of such Offenders; and if the said C. D. shall neglect or refuse to pay the said several Sums of 7s. 6d. and 5s. for the Uses aforesaid; That then you do levy the same by Distress and Sale of the Goods of the said C. D. and in Case there be no such Distress, that then you do certify the same to me, that I may be further dealt with according to Law. Given, &c.

(a) Or in the Pond of the said A. B. situate, &c. as the Case is.

## A Warrant to search suspicious Houses for Fishing Nets, and to seise them.

4 & 5 W. &  
M. c. 23.

**W** Hereas Complaint hath been made unto me by A. B. of, &c. That several Trouts, Pike and other Fish have been lately destroyed in the River, &c. running through &c. belonging to the said A. B. as Owner of the Royalty thereof, supposed to be done by some idle and ill disposed Persons in the Parish: And that several Persons within the said Parish, do keep Nets, Leaps, Pitches, and other Instruments and Engines for the Destruction of Fish, who are not qualified by Law to do the same: These are therefore in command you to enter into and search the Houses, Out-houses, or other suspected Places of all such Persons within your Parish, which you are informed have any Nets, or other Instruments for Destruction of Fish, and to seise the same wherever you shall find them; and to bring the Person or Persons, in whose House or Possession they shall be found, before me, or some other of his Majesty's Justices of the Peace for this County, to be dealt with according to Law. Given, &c.

## A Warrant to levy the 20*l.* forfeited for importing Fish taken by Foreigners.

1 Geo. c. 6.

Essex, ss.

(a) Or Fishing on the Coasts of England with a Net with Meshes of less than three Inches and an Half from Knot to Knot, to catch Fish, other than Herrings, Pilchards, Sprats, or Lavidnian, contrary to, &c. or as the Offence is, Mutatis Mutandis.

**W** Hereas a Complaint hath been made unto me D. P. Esq; one of his Majesty's Justices of the Peace of the said County, that J. E. of, &c. did on the 23<sup>d</sup> Day of July last past import into D. in the said County, and in the Realm of England, a certain Quantity of fresh Fish taken by Foreigners and Strangers other than Protestant Strangers dwelling in England, contrary to the Statute in that Case made and provided, which said Offence the aforesaid J. E. was lawfully convicted before me on the Day aforesaid, by Reason whereof he hath forfeited the Sum of 20*l.* These are therefore require you to levy the said Sum of 20*l.* on the Goods and Chattels of the said J. E. by Distress and Sale thereof, rendering to him the Overplus, if any such shall be, and that you forthwith pay one Moiety thereof to R. B. &c. who first informed me of the said Offence, and the other Moiety to the Church-wardens and Overseers of the



Poor of the Parish of D. where the same was committed, for the Use of the Poor thereof; and if no such Distress can be had, that then you certify me thereof, that such further Course may be taken therein as directed by Law. Given, &c.

## An Indictment for Fishing without the Consent of the Owner.

Essex, ss. **T**HE Jurors, &c. do present that J. O. of such a Place, in the said County, Yeoman, on the Third Day of January, in such a Year, with Force and Arms, broke the Close of one A. S. at P. in the County aforesaid, and there unlawfully fished in his separate Fishery, and the Fishes therein, that is to say, two Salmons, and one hundred Trouts, &c. to the Value, &c. then and there took and carried away, and his Grass to the Value, &c. there late growing, trod down and consumed, and brought other Wrongs upon him, against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

## Flea.

**P**ersons preaching, or otherwise avouching or notifying, that any Eating of Fish or Forbearing of Flesh is necessary for the Saving of the Soul, or the Service of GOD, otherwise than as other Politick Laws be, shall be punished as Spreaders of false News at Quarter-Sessions. 5 Eliz. c. 5. 1 Jac. 1. c. 29.

Persons preaching up the Eating of Fish.

Any, except Aged, Sick, with Child, or licensed, eating Flesh in Lent, or on Fish-Days, forfeits 20s. and one Month's Imprisonment. 5 Eliz. c. 5. 27 Eliz. c. 11. Lamb. 458. 35 Eliz. c. 7. 1 Jac. 1. c. 29.

Bishop of the Diocese, Parson, Vicar or Curate of the Parish, where one is sick, may grant Licencie for eating of Flesh, which must be signed with the Hand of the Bishop, Parson, &c. and endure no longer than the Sickness. 5 Eliz. c. 5.

Flax. See Wool.

C c 2

Force

## Force Lawful.

In what Cases  
Doors may be  
broke open.

**D**OORS may be broken open in the following Cases.

1. For Treason, Felony, or Suspicion thereof.
2. Where any Person, who hath wounded another very dangerously, and flieth for the same to an House.
3. A Popish Recusant Convict.
4. An Affray in the House, and the Doors shut.
5. Upon a Warrant for the Peace or good Behaviour.

*Quære.*

6. Upon a *Capias Utlagatum* in a personal Action, and upon a *Capias pro fine* directed to the Sheriff.

7. Upon a forcible Entry, or Detainer found by Inquisition before the Justices, or upon their own View.

8. Upon a Judgment in Ejectment; but then the Officer must signify the Cause of his coming. 5 Rep. 91.

9. In all Cases where the King is Party, or hath any Interest, &c.

A Justice, Sheriff, Constable, or Coroner may use Force in apprehending such as in their Presence attempt to break the Peace. *Dalt.* 396.

Where not.

But you cannot break open a Door upon an Execution at the Suit of a common Person, for 'tis illegal; and if the Officer is killed in doing it, 'tis only Manslaughter. *Jones* 429.

A Man was outlawed for Want of an Appearance; the Sheriff, without the Plaintiff's Privy came to his House with a *Latitat* and a *Capias Utlagatum*, and the outward Door being open, they drew their Swords, and went up Stairs, and knock'd gently at the Door of the Chamber where the Man was in Bed, which was lock'd, but did not tell who they were, or what they came for; but the Door not being immediately open'd, they broke it open, and arrested the Man upon the *Latitat*, and took a Bail Bond and 40 s. for a *Supersedeas* to the Outlawry; for this the Sheriff was fined 200 l. *Hob.* 262, 63.

So where on Meſne Process the Sheriff knocking gently at the Door, and the Wife opening it a little, he forced in with his Sword drawn, and broke open the Door where the Defendant lay; this was unlawful, because the first Entry being by Craft and Violence was so. 1 Vent. 306.

But if the Defendant put his Hand out of the Window, which the Bailiff catcheth hold of, this is such a Taking, that he may justify the Breaking open the House.

Flight. See Forfeiture.

Forcible

## Forcible Entry.

**T**H O' generally the Common Law abhors all Force, yet at Common Law one might enter into and detain with Force any Lands or Tenements, where his Entry was lawful; and this tho' in the Presence of an Officer, who could not interpose, unless some great Mischief, as Murder, &c. were committed.

If any one or more Persons come armed (especially with Weapons not usually born) to a House or Lands, and shall violently enter thereinto, this is a Forcible Entry within the Statutes; so having entered peaceably into an House, &c. shall forcibly put another out of his Possession. *Lamb. 145.*

What is a Forcible Entry, within the Statutes.

So if after a Peaceable Entry he shall use any violent Threatning, &c. to the Intent to get him out of Possession, this is a Forcible Entry.

If divers come with Weapons (not usually born by them) to an House that is open, &c. and enter peaceably without any Resistance, yet this is a Forcible Entry; for it shall be intended, that they would have used Force if they had been resisted. *Lamb. 146.*

Putting back of a Bolt is Force, and entring into an empty House with armed Men is a Force. *Moor 656.*

So if the Master enter with a more than ordinary Number of Servants that attend him; So if the Landlord eject or distrain for Rent with Force.

But a Forcible Entry cannot be without an actual Entry.

And it is no Forcible Entry for him that hath a Right of Entry to go over the Land (tho' with divers in his Company, and with Weapons) to Church, Market, &c. if he do not express his Intent that he enters claiming the Land.

If one enter with Force into, &c. tho' no actual Possession be obtained, yet it is a Forcible Entry, punishable by the Justice; but there is no Restitution to be made where there is no forcible Putting out or Holding out of Possession, and found by a Jury.

If one whose Entry is lawful, by fair Means shall persuade him that is in Possession to quit the House, and shut the Door, this is justifiable, if he doth not afterwards hold it with Force. *Dalt. c. 89.*

If I take a Man being out of his House, and send my Servants to take Possession in a peaceable Manner, and I detain him by imprisoning him, this is not a Forcible



Forcible Detainer what.

cible Entry, but a false Imprisoning, punishable by Law. *Lamb.* 149.

A forcible Detainer is a violent Act of Resistance by Force, whereby the lawful Entry of the Justice or any other is thereby hinder'd, and this must be intended of the Possession of Lands and Tenements, and not of the Person of a Man.

If a Man obtain Possession by a Lawful and peaceable Entry, and continue peaceably therein for three Years, then he may keep it with Force against all Persons but the King's Officers: 8 H. 6. c. 9. Sect. 7. 31 Eliz.

If a Justice comes to a House where the Force is suspected to be, and find the Doors and Gates shut, and the Party which is within deny him Entrance, this is a Detainer with Force, tho' he see no Person or Arms, &c. and tho' there be but one Person in the House, &c. *Lamb.* 148, 473.

If Men armed, or having any Arms lying by them, or a greater Number of People than the ordinary Family, or a greater Number of Arms than ordinary are brought into the House, with an Intent to use them in the Defence of the Possession; or if armed Men are ordered to lie in Readiness in a Place not far distant, or to stop the Way of the Disseisee with Force and Arms, so that he cannot enter, or keep Cattle with Force in another Man's Ground, claiming Common where he hath none at all; these Acts the Justice upon View ought to judge a Forcible Detainer. *Dalt.* c. 89.

If *A.* enters upon *B.* wrongfully, though peaceably, and put him out of Possession, if *B.* comes with an Intention to enter, and *A.* threatens to kill him if he does, this is a Forcible Detainer, tho' only by Words. But if he desires *A.* to open the Door to him, and he only denies, this is no Forcible Detainer.

If *A.* be Tenant at the Will of *B.* and *B.* enters and commands *A.* to quit the Possession, and he denies it, this is no Forcible Detainer, unless some Act of Violence be used to maintain the Possession.

If a Disseisor make a Gift in Tail to *B.* who after a Claim made by the Disseisee continues the Possession with Force, this amounts to a Forcible Detainer; and when a Man's Entry is lawful, and the Possession is detained from him with Force, the Party may pray the Aid of a Justice to remove the Force.

*N. B.* One Person alone may commit a Forcible Entry or Detainer. *Co. Littleton*, f. 257.

It seems an Infant above the Age of fourteen Years may commit a Forcible Entry or Detainer ; and so may a Feme Covert, and she may be imprisoned and fined, and the Husband shall not be charged with the Fine of his Wife.

It seems a Command, Consent, or Agreement, &c. without an actual Entry, or being present when the Fact committed, is not within the Statutes of Forcible Entry. *Dalt. c. 89.*

If divers come in Company to enter into any Lands, &c. and if but one of them commit a Force, they are all guilty. *Co. Litt. 257.* If more than three it is a Riot, and then the two next Justices may inquire within a Month by a Jury.

A Forcible Entry may be made upon a Lessee for Years, or Will, or Copyhold, either by a Stranger or Lessor himself.

To prevent Forcible Entries, it is enacted by Stat. 5 R. 2. c. 7. That no Man shall enter into any Lands &c. with Force or Multitude, tho' he had a Right or Title of Entry.

Statutes for remedying Forcible Entries and Detainers.  
5 R. 2. c. 7.  
15 R. 2. c. 2.

But the aforesaid Statute not extending to a Forcible Detainer, or authorizing the Justices of Peace to punish the Transgressors of it, but by Indictment at their Sessions, it was further provided by another made 15 R. 2. c. 2. That if any Man detain or hold with Force after such Forcible Entry ; upon Complaint thereof to a Justice of Peace, he shall take sufficient Power with him, and view the Place where the Entry and Detainer is by Force, and by his View and Record of the Force shall convict and imprison the Offenders, till they have made Fine and Ransom to the King.

By this Statute likewise the Sheriffs and all others are to be Assistant to the Justices, upon Pain of Fine and Imprisonment.

But still there remained some Inconveniencies, which the Law did not remedy, as 1. If the Entry was peaceable, and the Detainer by Force. 2. If the Persons were gone before the Justices came, they could proceed no further. 3. They had not Power to give Restitution to the Party grieved.

All these were remedy'd by Statute of 8 Hen. 6. c. 9. 8 H. 6. c. 9. which gives Power to one or more Justices, by Warrant to command the Sheriff to summon a Jury, to inquire of the Force, and to seize the Tenements as well in the Absence as Presence of the Offender.

It likewise appoints the Statute of 15 R. 2. to be put in Execution, altho' the Detainer by Force was

## Forcible Entry.

after a peaceable Entry, and all at the Costs of the Party grieved.

It likewise inflicts the Penalty of 20*l.* upon the Sheriff neglecting his Duty, to be recovered by Indictment at Sessions, and divided between King and Prosecutor.

31 Eliz. c. 11.

By the Statute of 31 *Eliz.* c. 11. no Restitution can be made upon Indictment of Force, &c. where the Party has had a peaceable Possession for three Years. 2 *Cro.* 199.

21 Jac. 1. c. 15.

By the Statute of 21 *Jac.* 1. c. 15. the Justices have Power to give Restitution to Tenants for Years, Tenants by *Elegit*, Statute, &c. Copyholders, &c. as well as to Freeholders put out or detained by Force; so that now a compleat Remedy is given.

1. Against those who enter with Force, and continue the Possession peaceably.

2. Against those who enter peaceably, and hold out with Force.

3. Against those who enter and hold out with Force.

Any Justice of Peace, on Notice of a Forcible Entry into, or holding or detaining of any Possession at the Charge of the Party grieved, ought to make due Execution of the Statutes in Manner following.

The Power of  
the Justices up  
on the Statute  
of 15 R. 2  
c. 2. one Ju-  
stice.

He ought to go to the Place, and take the Assistance of the Sheriff if he thinks fit, may break open the Door, if resisted, and may arrest and commit the Offenders; he may command any one to assist him, and commit and fine those who refuse.

If he sees the Force he may record it, and commit the Offenders; for his View is a Conviction; and this Record being certify'd in *B. R.* the Court will grant Restitution, and assess a Fine. 8 *Rep.* 120.

Upon the Sta-  
tute of 8 H. 6.  
two Justices.

If the Offenders are gone before the Justices come, then they may direct their Precept to the Sheriff, to impanel twenty-four Men of 40*s.* *per Ann.* Frehold each of them, and twelve must be sworn to enquire of the Force; and when found the Justices may either themselves put the Party in Possession, or make a Precept to the Sheriff for that Purpose; and this must be done tho' they view the Force, if they intend to put the Party into Possession.

The same Justices before whom the Force was found, having made a Precept to the Sheriff to restore the Party, may grant a *Superfedeas*, if they see Cause; and a *Certiorari*, which must be deliver'd in open Sessions, is a *Superfedeas*.



If the Sheriff return, that he cannot make Restitution because he was resisted, he shall be fined, for he may raise the *Posse Comitatus*.

If a Jury impanel'd by the Sheriff by Virtue of the Justice's Precept, shall make Default in their Appearance, the Justice may award an *Alias* and *Pluries*, and return 40 s. Issues upon the second Precept on each of the Jury, and 5 l. Issues on the third Precept, and at every Time afterwards double.

If when the Justice comes there be no Resistance or Shew of Force, the Justice cannot arrest the Offender.

If a Forcible Entry be found by the Oath of the Enquirers, the Justice shall put the Party into Possession; but then both the Putting and Holding out must be found.

Mayors of Cities and Boroughs in their Franchises have the same Authority as the Justices have in their County at large. 8 H. 6. c. 9. sect. 6.

In Case the Party grieved doth not think fit to apply himself to the Justices, then he may have an Action of Trespass against the Person, who had no Title of Entry, and entering with Force, and may recover treble Costs and Damages; but if the Entry was upon good Title, though with Force, then you must proceed by Indictment. 8 H. 6. *Dalt. c. 92.*

What Remedy where the Party grieved does not apply to the Justices.

In the Indictment the Entry must be *Vi & Armis*, or peaceably, and detaining with Force, according to the Words of the Statute of 8 H. 6. *Roll. 2 Abr. p. 80.*

So the Quality of the Thing upon which the Entry was made must also be set forth, as into a Messuage, Meadow, Wood, &c. for entering into *Tenementa* generally is not good, because of the Uncertainty. 2 *Roll. Rep. 46.* So an Entry into two Closes *Prati sive Pasturæ* is not good. *Roll. 2 Abr. p. 81.*

It must be either *Manu forti* or *Multitudine Gentium*, and it must conclude *adhuc extratenet*; for without those Words there cannot be any Restitution, and likewise *contra Formam Statuti*. *Roll. 2 Abr. p. 82.*

It must be certain, therefore an Entry into *Messuagium*, or *Cottagium sive Tenementum*, is void. *Roll. 2 Abr. p. 80. 1 Mod. 73.* But in *Clausum* is good, for that is certain enough.

In the Indictment the Estate must be set forth; for it is not enough to alledge generally, that *possessionatus fuit*, because a Tenant at Will may be so possessed, and he is not within either of the Statutes. *Sid. 102. 1 Mod. 73.*

'Tis

'Tis not the best Way to recite the Statutes in the Indictment, because if misrecited in any one particular it will be quash'd. *Cr. Eliz.* 93, 96, 106, 107, 697, 1 *Bulst.* 218.

The Indictment was for a Forcible Entry into a Copyhold, *viz.* That the Defendant *ejecit & disseisin*, for which Reason it was quash'd; because Disseisin is applicable only to Freehold, and therefore in all Cases, except for a Freehold, it ought to be *ejecit, expulit, & amovit*. *Raym.* 67. 4 *Inst.* 176.

Pleas to an Indictment.

Quiet Possession for three Years before the Inquisition found, is a good Plea to an Indictment of Forcible Entry. *Stat.* 31 *Eliz. c.* 11. *Raym.* 84. This must be understood of a Term of Years; but if it had been a Freehold, then he must set forth that he was seised, &c. and was in Possession for three Years, &c. and 'tis not material to shew how seised, because it is not the Title but the Possession which is requisite to be alledged. *Sid.* 156.

Defendant may demur to the Insufficiency of the Indictment, and plead to the Insufficiency of the Jurors not having 40 s. Freehold.

Defendant may bring a *Certiorari*, which is a *Superfedeas*. 1 *Cro.* 146. Or he may tender a Traverse.

Where Defendant traverses.

And if the Defendant traverse the Indictment, the best Way for the Justice is to certify it into *B. R.* But if the Justice will try the Traverse presently, it must be by a new Jury, *Sid.* 287. and not by the Jury who found the Inquisition of the Forcible Entry.

And a Traverse is no *Superfedeas*, because the Force being found upon the Indictment, the Justice may restore the Party grieved, or otherwise may certify the Indictment *ut supra*; but he who tenders the Traverse must bear all the Charges of the Prosecution both before the Justice and in *B. R.*

Tho' a Man, continuing peaceably in Possession, may by 31 *Eliz. c.* 11. justify a Detainer by Force, yet a Detainer of Lands by Force for three Years or more, where a Man comes to them by an unlawful Title, will not excuse the Punishment by the Justices, by 8 *H. 6. c.* 9.

Where Justice may remove Force, and grant Restitution.

Where a Force is committed, or there is a Detainer of Possession by Force, a Justice is obliged to go to the Place and make Inquisition, tho' he receives Notice of it by others than the Party injured; and if the Force be found, he is to make Restitution. *Mich.* 7. *Edw.* 4. And no other Justice of Peace can grant a *Superfedeas*, or stay the Restitution. *Dyer* 187.

Where

Where there are Tenants in Common, or Jointenants Lands, &c. and one of them puts the other out of Possession by Force, a Justice of Peace is to enquire, remove by Force, and restore the Possession.

And if a Man take a Distress for Rent by Force, or a commoner be with-held from his Common by Force, or if a Person keeps his Beasts in the Ground of another by Force, a Justice may remove the Force, but not award Restitution. *Mich. 21 Ed. 4. 10 H. 7. fol. 9. b. Pl. 21. of Tithes, 3 Cr. 201. Dyer 141.*

After Enquiry the Justice may break open the House, and restore the Party himself.

Where they find a Force, and make a Record of it on their own View, they may commit the Offenders, but cannot grant Restitution. *1 Vent. 308. Sid. 156.*

If the Defendant traverse the Indictment, the best Way the Justice is to certify it into *B. R.*

But after a Traverse the Court cannot grant Restitution. *Vent. 365.* But in *Dyer* there is a contrary Opinion. nor can they award Restitution after a *Certiorari* to remove an Inquisition of a Forcible Detainer.

The Certificate of the Justices ought to shew the time when the Complaint was made, because such Certificate is in Nature of an Indictment, and traversable.

*Roll. Rep. 39.*

No other Justice or Justices, (except *B. R.*) but he before whom the Force is found, can award Restitution.

If an Indictment be removed, and no Prosecution the next Term, the Court may award Restitution.

*N. B.* A Man cannot justify the Breaking open of an House by Virtue of a Warrant from a Secretary of State; and no House can be broke open, unless there is a Civil Officer present.

But if a Man hath a Warrant to apprehend another, and mistaking the Law breaks open the Door to execute it, he is only a Trespasser, and not guilty of Felony, because there must be a felonious Intent to make one guilty of Felony; but if after a Door is broke open, one of the Company steals any Thing, 'tis Felony in him, and not in the rest, unless they were assisting to it.

Restitution is to be made only to the same Person who was put out; so that if a Man be put out of the Possession of Lands by Force, and dieth, the Justices of Peace have no Power to give Restitution to his Heirs. The same if Tenant for Years be ousted of his Term by Force, and dies before Inquisition, the Justices cannot restore



restore the Executor to Possession. And the same in other Cases. But the Person committing the Force may be indicted, and fined by the Justices of Peace. 2 Lev. 327. *Sewer's Case*.

A *Certiorari* was brought where a Record of a Force was made by a Justice of Peace, but he omitted to commit the Offenders, and to fine and imprison them, upon the Record in *B. R.* a Motion was made, that the Offenders might be fined and imprisoned; but the Court refused to do it, because the Record of the Force was void for Want of Commitment immediately, according to the Statute. *Moor Rep.* 848.

In every Indictment for Forcible Entry, the Estate that the Party hath in the Premises, ought to be shewn, and an Indictment of Forcible Entry made upon a Lease for so many Years, if a Person so long live, was quash'd because it did not appear by the Indictment that the Lessee had any Title to the Land at the Time of the Force committed; and for that it was not averr'd, that the Person was alive at the Time of the Forcible Entry. *Sperdyng Rep.* 147. *Bray's Case*.

If Fine be set on Conviction, Defendant must bring his Writ of Error where there can be no Restitution, &c.

Upon a Conviction of Forcible Entry, if a Fine be set, the Conviction cannot be quash'd on Motion, for the Defendant must bring his Writ of Error; but it is otherwise if no Fine be set, because then it may be quash'd on Motion. 2 *Salk.* 450.

If an Inquisition of Forcible Entry be remov'd from before Justices into *B. R.* by *Certiorari*, there can be no Restitution if the Defendant either traverses the Force, or pleads three Years quiet Possession before the Force, for these are to be tried first. 1 *Vent.* 260. 1 *Salk.* 260.

Expulsion and Disseisin must be expressly alledged in Inquisitions and Indictments on Forcible Entries; but Tenants at Will are not within the Statute. *Pollock* 205. *F. N. B.* 248.

Where *B. R.* may grant Restitution.

If a Man be restored upon an insufficient Indictment which is removed into *B. R.* that Court may cause the Party to be restored that before was put out by the Justices of Peace.

So two Justices of Peace, that were present at the Finding of the Force, may supersede a Writ of Restitution grounded upon an insufficient Indictment; and if it were found at the Quarter-Sessions, the *Superfedeas* shall be granted under the *Teste* of one of those Justices only, who were present at the Finding of the Force. *Dyer* 187.

An Indictment, that he entered and detained with Force, is traversed, and found, that he entered with Force.

ce, but not held with Force, is good, and Restitution  
ll be awarded; and if upon a Traverse it is found, that  
entred with Force, and the other detained with  
ce, yet the Party shall be restored. *Bro. Forc. 15.*

But where the Jury found *quoad* the Entry *Ignoramus*,  
*quoad* the Detainer *Billa vera*, upon Restitution  
rded by the Justices of Peace, *B. R.* set it aside,  
granted a Re-restitution, because the Indictment be-  
intire for the Entry as well as the Detainer, and the  
y having found but one, it is therefore void. *Yelv. 99.*  
*2 Cro. 151. Sid. 97, 414. contra.*

Indictment *quare in medietatem intravit* is void; for  
Entry must be found into the Whole. *Palm. 419.*

If it be found by one Inquest, that *A.* put out *B.*  
h Force, and it is found by another Inquest, that *B.*  
eiffed *A.* with Force, now either Party may pray Exe-  
on against the other; but he who first obtained it  
y be put out by Virtue of the second Writ of Restitu-  
n. *Bro. Forc. 15.*

The Justices of Gaol-Delivery, or of Oyer and Ter-  
er, or Justices of the Peace at their General Sessions,  
not grant Restitution, unless the Indictment was ta-  
n before them. But if the Justice, before whom such  
quisition was found, die before Restitution made, or  
ore it be removed, by some Opinions, the rest of the  
ices at the General Sessions may grant a Writ of Re-  
stitution. But the Court of *B. R.* either upon Certificate,  
Removal by *Certiorari*, or a Delivery thereof in Per-  
by the Justice before whom such Indictment was ta-  
n, may award Restitution; but neither *B. R.* nor  
y (besides him who made the Inquiry) can personally  
ore but only by Precept to the Sheriff. *Dalt. c. 94.*

And the same Justice before whom the Force is found,  
ving granted a Writ of Restitution, may after stay it  
*Superfedeas* to the Sheriff, and no other Justice besides  
do it.

Any Person of the Family in a House preserves the  
ession, but not his Cattle being upon the Ground.

Two Jointenants, or Tenants in Common, and one  
s the other out forcibly, he may have Trespass upon  
*H. 6. c. 9.*

The Stat. 21 *Jac. 1. c. 15.* is to be taken strictly,  
d not by Equity; and an Indictment upon it for a  
pyholder, omitting *per Copiam Rotulorum Curie*, was  
ash'd. *Latch 182.*

By 21 *Jac. 1. c. 8.* all Writs of *Certiorari* must be How Certio-  
livered at the Quarter-Sessions in open Court, and r... must be  
ll not be allowed, unless the Party indicted become allowed.

bound

When Justices  
of Gaol Deli-  
very, or Oyer  
and Terminer  
may grant Re-  
stitution.

In what Cases  
B. R. general-  
ly grants Re-  
stitution.

bound to the Prosecutors in a Bond of 10*l.* Condition to pay to the Prosecutors such Costs and damages, within one Month after the Conviction of Party indicted, as shall be assessed by the Justices in Sessions; and altho' the Indictment be found after *Teste* of the *Certiorari*, it is not material.

Re-restitution is ordinarily granted by B. R. in Cases.

If Restitution be made without Enquiry, it is punishable in B. R.

1. If the Indictment remov'd be quash'd for Matter the Body of it, or Exception.

2. If a *Certiorari* hath issued which hath not been allow'd, or the Proceedings not staid thereby.

3. If any indirect Practice has been used to avoid Effects of the *Certiorari*.

4. If the Justices below do not allow the Plea of Years Possession, or otherwise misbehave themselves.

And sometimes Restitution is denied, where the Party in Possession offers to appear and try the Right.

Upon View of a Force Justices of Peace are Justices and may set a Fine; and if there be Error, a Writ of Error may be brought. *Stile* 300, 303.

It is in the Election of a Justice of Peace to set a Fine upon the Party, and refuse the Party to his Verdict upon View of the Force. *Stile* 360.

It is not necessary that the next Justice of Peace should remove a Force; but all the Justices of Peace of the County are bound to do it. *Stile* 246.

If a *Certiorari* be brought to remove an Indictment for Forcible Entry against several, some put in Bail for Damage, it is good. *Stile* 360, 361.

One Justice of Peace alone may inquire of a Forcible Entry, and remove it by Statute 8 H. 9. c. 9.

If a Man cometh to Lands, &c. by an unlawful Title, though he hath detained the Land by Force for Years or more, yet that shall not excuse his being dispossessed by the Justices of Peace according to the Statute 8 H. 6. c. 9. *Pas.* 14 H. 7. f. 28. a. *Pl.* 4.

But if a Man hath been seised by a good and just Title for three Years, and after is disseised by Wrong, after he re-enters, he may retain with Force; for he is not to be remitted, and in by his former Title 23 H. 8. Br. Case, f. 5. b. *Pl.* 31. Br. Abr. Title Forcible Entry No 22.

If a Man hath been twenty Years in peaceable possession of Lands, and be once removed from the Possession



son, he cannot get and retain the same with Force. *Dyer* 141, 142.

There may be a Forcible Entry into the Moiety of a Manor. *Latch* 224. *Beverley's Case*.

If a Man be indicted for a Forcible Entry upon 8 H. 6. c. 9. and before Restitution the Force is pardoned by Statute or General Pardon, there shall be no Restitution on that Indictment, because the first Force and Offence is pardoned. *Hill*. 4 *Jac.* 1. *Yelv.* 99. *Farwel's Case*: *Cro. Jac. p.* 148. *May* 199. And all the Reports say it was so resolved in a Case between the Lord *Stafford* and *Sir Thomas Thynn*.

Not where there is a General Pardon.

An Indictment for a Forcible Entry was quash'd because the Party had made no Title. *Mich.* 1649. *Style's Rep.* 174.

Although one may be disseised of a Rent or Common by Force, which is inquirable and punishable if it be found; yet one may not be indicted or committed for entering his own Land with Force, or holding his own Land with Force against a Commoner. And this Statute is not to be extended against any but him who enters unlawfully, and ousts another of his lawful Possession. *Mich. B. R.* 10 *Car.* 1. *Cr. Car.* 486. *Pl.* 10. *Sydnam and Parr's Case*.

Where one is indicted of a Forcible Entry before the Justices of Peace, and offers to traverse the Force, and the Justices of Peace refuse it, but award Restitution; this being removed, the Court said the Justices ought to have accepted of the Traverse; for the first Finding is in Nature of a Presentment, which upon the Traverse of the Party ought to be presently tried; and if it be found no Force, no Restitution ought to be. And the Court awarded Restitution. *Trin.* 18 *Car.* 2. *B. R. Sid.* 287. *Pl.* 1. *Rex versus Parker & al'*.

If the Justice record a Force, and send to Prison, where no Force is, the Party is remediless; if a Rescue be made of the Prisoners committed by them, they may record this also.

If it be found that one is ousted by Force, and thereupon he is restored, and after he is ousted by Force again by the same Party, in this Case he shall not have Restitution the second Time upon the same Inquisition.

If the Justice, upon Complaint or Notice given of a Force, do not remove the Force, record it, and commit the Offenders, it is punishable in *B. R.* *Dalt.*

If the Offenders are gone, the Justice may send his Warrant, and commit them 'till they find Surety for their Good Behaviour. *Dalt.* 84.

Thought

## Forcible Entry.

Though the Person using the Force has the Right; yet is the Justice to remove him. *Black. 155.*

### A Record of a Forcible Entry.

Essex, *ss.* **B**E it remembered that A. B. (of such a Place, &c.) on the Third Day of January, in the Eighth Year of the Reign of our Sovereign Lord the King, complained to me E. S. Knt. one of the Justices of our Sovereign Lord the King, assigned to keep the Peace in the said County, that J. O. and J. S. of such a Place, &c. and others unknown Disturbers of the Peace of our said Sovereign Lord the King, with main Force entered into the Dwelling-house of the said A. B. in H. aforesaid, and disseised the said A. B. thereof, and with main Force and armed Power, then with-held the said House, and therefore demanded of me to appoint him a proper Remedy in this Particular, which said Complaint and Petition being heard, I the said E. S. immediately went in Person to the said House, and there found the said J. O. and J. S. in the House, holding the said House with main Force and armed Power (that is to say) with Swords, Staves and Guns, &c. against the Form of the Statute in such Case made and provided. And furthermore I the said E. S. the said J. O. and J. S. then and there caused to be arrested and to be carried to the next Gaol of our said Sovereign Lord the King, at H. in the said County, as of the said main Force and Detainer upon my View and Record thereof convicted, there to abide till they paid a Fine to our said Sovereign Lord the King for their Trespases aforesaid. Done at H. aforesaid, under my Seal, the Day and Year aforesaid.

### A Mittimus upon View of a Forcible Detainer.

Kent, *ss.* **A**. C. Esq; (one of his Majesty's Justices of the Peace assigned to keep the Peace in the County aforesaid) to the Keeper of her Majesty's Gaol for the said County of Maidstone in the County aforesaid greeting: Whereas, upon Complaint unto me by A. B. of L. in the said County, I did this present Day go to the Dwelling-house of the said A. in L. aforesaid, and there did find C. D. of, &c. E. F. of, &c. forcibly with strong Arms and armed Power holding the said House, against the Peace

of our Sovereign Lord the King, and against the Form of the Statute in that Behalf made and provided. And therefore I herewithal send unto you the Bodies of the said C. D. E. F. and G. H. convicted of the said forcible Holding by my own View, Testimony, and Record, commanding you (in his Majesty's Name) to receive them into the said Gaol, and there safely to keep until they have made Fine and Ransom to his said Majesty for their said Trespases, and shall be thence delivered by the Order of the Law of this Land. Hereof fail not, &c.

A Precept to the Sheriff in the Nature of a *Venire facias*, to summon a Jury.

Essex, ss. **J.** S. Baronet, one of the Justices of our Sovereign Lord the King, assigned to keep the Peace in the County aforesaid, to the Sheriff of the same County greeting: On the Part of our said Sovereign Lord the King, I command you that you cause to come before me at V. in the County aforesaid, on the Eighth Day of January next to come, Twenty-four honest and lawful Men of the Neighbourhood of V. aforesaid, each of which to have 40s. of Lands and Tenements or Rents at least yearly beyond Reprisals, to inquire upon their Oath, for our said Sovereign Lord the King, of a certain Entry with main Force done in the Messuage of one J. O. at V. aforesaid, against the Form of the Statute in such Case made and provided; and do you see that upon every one of the impanelled Jurors by himself in this Case to be impanelled, you return 20s. of Issues at the Day aforesaid, and this do you in no wise omit, under the Penalty of 20l. and have you there at the same Time this Precept. Witness my self the said J. S. on the Tenth Day of January, in the Eighth Year of the Reign of our Sovereign Lord George the Second, by the Grace of GOD, King of Great Britain, France and Ireland, Defender of the Faith, &c.

Upon the Stat.  
of 8 H. 6.  
c. 9.



## An Inquisition taken upon the Force.

**A**N Inquisition taken for our Sovereign Lord the King at J. in the County of Essex, on the Eighth Day of January, in the Eighth Year of our Sovereign Lord George, by the Grace of GOD, King of Great Britain, France and Ireland, Defender of the Faith, &c. by the Oaths of C. L. R. R. H. S. W. N. &c. before J. P. Baronet, one of the Justices of our said Sovereign Lord the King, assigned to keep the Peace in the said County, and also to hear and determine divers Felonies, Trespasses, and other Offences committed in the said County, who declare upon their Oath that J. O. of H. in the said County, Yeoman, was lawfully and peaceably seised in his Demesne as of Fee of and in one Messuage, with the Appurtenances in L. aforesaid, and continued such his peaceable Possession 'till J. B. of such a Place, and J. S. of such a Place, and others, Malefactors unknown, on the Thirtieth Day of December last past, with Force and Arms (to wit) with Staves, Swords and Guns, entered into the said Messuage with the Appurtenances, and disseised the said J. O. thereof, and with main Force expelled, and him so expelled and disseised of the said Messuage on the said Thirtieth Day of December, until the Day of taking this Inquisition, with main Force and armed Power withheld, and now do withhold, in great Disturbance of the Peace of our said Sovereign Lord the King, against the Form of the Statute in such Case made and provided; whereas none of them, nor any other Person, with Estate he or they have, had any Thing in the said Messuage, with the Appurtenances, or any Part thereof, within the Years next before their Entry aforesaid, or at any Time to the Knowledge of the said Jurors aforesaid.

## A Warrant to the Sheriff for Restitution

Kelway, p. 41.  
3 Bull. 71.  
Dyer 141.

Essex, J. **R.** K. Esq; one of his Majesty's Justices, signed to keep the Peace in the County aforesaid, to the Sheriff of the said County, greeting: Whereas by a certain Inquisition taken before me at A. in the County aforesaid, the Second Day of June, &c. upon the Oath of A. B. C. D. E. F. &c. according to the Form of the Statute, in Case of Forcible Entry made and provided, it was found that G. H. &c. and others (as in the Inquisition) as by the said Inquisition of Record, doth more fully appear

appear: These are therefore (in his Majesty's Name) to Will and Require you (with the Power of the County, if need require) to go to the said Messuage, &c. and other the Premises, and to cause the same with their Appurtenances to be restored; and the said C. D. to be restored in and to his full Possession thereof, as he was before the same Entry, according to the Form of the aforesaid Statute. Hereof fail not, &c.

If the Proceedings are at the Sessions by Way of Indictment, then the Form is,

Essex, ss. **T**HE Jurors, &c. do present that J. O. and J. S. of such a Place, there being taken and associated to them others, Malefactors and Disturbers of the Peace of our said Sovereign Lord the King, and every of them, armed in an hostile Manner, whose Names the said Jurors are altogether Ignorant of, on the Ninth Day of January, in the Eighth Year of the Reign of our Sovereign Lord George the Second, &c. at H. in the County aforesaid, with Force and Arms, (that is to say) with Staves, Swords, Guns, Stones, and other offensive Weapons, entered into the Messuage, with the Appurtenances in H. aforesaid, upon the Quiet and Peaceable Possession of one R. N. of which said Messuage the said R. N. then was and now is possessed for the Term of Seven Years then to come and unexpired; and the said J. O. and J. S. and others, Malefactors aforesaid, with Force and Arms ejected, expelled and removed the said R. N. from his Possession aforesaid, and unlawfully, and with main Force have and each of them hath with-held the said R. N. so driven out therefrom, against the Peace of our said Sovereign Lord the King, and against the Form of the Statute in such Case made and provided, &c.

There are many Niceties in drawing this Indictment; and first as to the Entry into Lands, it is always necessary to say *ad tunc existens liberum tenementum*; but to say *ad tunc* & *ad huc* is repugnant, because it cannot be *ad huc* if it is Freehold, for he is disseised. 3 Bulst. 68. Ney 131. Hatch 109.

But it ought to conclude with *extratenuer' & ad huc extratenent*; yet in my Lord Rolle we have a Case of an Indictment that was quashed for not setting forth that the Entry was upon such a Place, *ad tunc existens liberum tenementum*, and the later Authorities seem to agree with him.

In the Case of Freehold.  
Palm. 426.  
Latch 109.  
Cro. Eliz. 754.  
Het. 73.  
March 6.  
2 Roll. Rep. 65.

Sid. 132.  
Cro. Eliz. 32.  
1 Bulst. 201.  
1 Mod. 73.  
Cro. Eliz. 475.  
1 Mod. 73.

The Offender must be named of a Vill and County, because Proceſs of Outlawry lieth againſt him for his Offence.

Then the Place on which the Entry was made muſt be certain, and therefore if 'tis laid to be on a Rood of Land, 'tis void.

Yet for entring into a Cloſe, and not ſaying how many Acres, was held good.

It muſt always ſet forth the Eſtate of the Party grieved, and therefore if 'tis for a Term of Years, 'tis not ſufficient for the Party to ſet forth, that *poſſeſſionatus fui* generally; but he muſt ſhew for how many Years; if it be for a Freehold, then he muſt ſay *exiſtens liberum tenementum*. 'Tis true, formerly it hath been held, That thoſe Words are implied by the Word *Diſſeiſavit*, becauſe a Man cannot properly be diſſeiſed of any Thing but a Freehold; but it hath ſince been adjudged otherwiſe.  
2 Leon. 102. 4 Leon. 197. 1 Vent. 306. contra.

It muſt likewise be *inde diſſeiſavit*, for if that Word is left out, 'tis naught. Noy 120.

But if the Word *illicite* is left out, that will not hurt it becauſe *diſſeiſavit* implied it. Noy 125.

It muſt be ſet forth to be done *manu forti*, to diſtinguiſh it from all other Treſpaſſes, and thoſe Words are peculiar to an Indiſtment for this Offence. Style 155. Cro. Eliz. 461. 2 Cr. 199. 2 Bulst. 258. Noy 155.

### By a Copyholder.

Effex, ſſ. **T**HE Jurors, &c. do preſent, That T. P. of H. in the County aforeſaid, Gentleman, was ſeiſed in his Demefne as of Fee, at the Will of the Lord according to the Cuſtom of the Manor of H. in the County aforeſaid, of a Meſſuage with the Appurtenances in H. aforeſaid as Tenant by † Copy of Court-Roll of the ſame Manor, and being ‡ ſeiſed continued his Seisin and Poſſeſſion thereof as aforeſaid peaceably and quietly until J. S. of H. aforeſaid, Blackſmith on the 24th Day of January, in the Year, &c. with Force and Arms (to wit) with Staves, &c. entered into the ſaid Meſſuage with the Appurtenances, and drove out and removed the ſaid T. P. from his Poſſeſſion and Seisin aforeſaid with main Force and armed Power, and withheld and doth withhold the ſaid T. P. ſo driven out and removed from the ſame Meſſuage with the Appurtenances, from the ſaid 24th Day of January, in the Year aforeſaid, till this Day with ſuch Force and armed Power as aforeſaid, againſt the Peace.

\* Latch 182.

† Vent. 89.

‡ If it had been (ſeiſed and poſſeſſed,) it had been naught, becauſe uncertain. 1 Vent. 109.



Peace of our Sovereign Lord the King, and against the Form of the Statute, &c.

## Forfeitures.

Forfeiture is occasioned by some Offence against Law, and this Difference is to be observed, that where Lands are forfeited, it shall relate to the Time of the Offence committed; but where Goods and Chattels are forfeited, the Goods and Chattels of the Criminal are his own till Conviction or Attainder.

To what Time the Forfeiture of Lands shall relate.

And the Sheriff or other Officer ought not to remove them, because the Property is not alter'd till Conviction, though usually they secure the Goods of the Felon as soon as he is apprehended; but this is expressly against the Statute of 1 Rich. 3. c. 3. by which 'tis enacted, That none shall seise the Goods of any arrested for Suspicion of Felony, before he is convicted or attainted thereof, upon Pain to forfeit double the Value of the Goods, &c. to be recovered by the Party grieved in an Action of Debt, &c.

To what Time the Forfeiture of Goods, &c.

If the Coroner's Inquest find *fugam fecit*, he forfeits his Goods, notwithstanding he should be afterwards acquitted of the Felony by the Petty Jury, and they should find that he did not fly for the same: So if an innocent Man is pursued as a Felon, and he fleeth and waveth his own Goods, they are forfeited, as if they had been stolen, for to fly from Trial, looks like Guilt.

If Coroners find *fugam fecit*, Goods are forfeited.

The Reason is, because the King's Prerogative may take the Advantage of that Record which is most for his interest, and that is the Record of the Coroner. *Stamf. Pl. Coron. 183. b.*

If a Man is acquitted of the Felony, but the Jury find *fugam fecit*, he shall lose his Goods which he had at the Time of the Acquittal, and not at the Time of the Flight. *Goldsb. 135.*

### The Forfeitures of Land.

### Forfeiture.

|          |   |                                |   |                      |                 |
|----------|---|--------------------------------|---|----------------------|-----------------|
| Treason. | { | Lands in Fee or in Tail,       | { | All the Goods        | 26 H. 8. c. 13. |
|          |   | or for Life, or Years.         |   | and Chattels         |                 |
|          | { | After Conviction or Attainder. | { | of what kind soever. |                 |

## Lands.

In Petit  
Treason.

For Life.  
 In Fee for a Year and a Day, to the  
 King.  
 In Tail during Life of Offender.

## Lands.

In Felony.

For Life.  
 In Fee Simple for a Year and a Day from the Time of the Felony committed.  
 To the King.  
 And Profits during Life of Offender.

Goods and Chattels from the Time of the Attainder or Conviction, all Debts due to him upon Statute, Bond, Simple Contract, and upon Account, and yet the King shall not pay such Debts as the Felon owed, and if the King assign the same, the Party may sue either in the King's Name, or his own. *Co. Lit. ff. 745 f. 390. Dyer 30.*

## Goods only.

In Man-  
slaughter,  
and *Felo de se*,  
Petit Lar-  
ceny.

Offenders forfeit Goods and Chattels.

## Goods only.

In Chance-  
Medly, & *se*  
*dependendo*.

Offenders forfeit Goods and Chattels, but they have their Pardon Course.

Felon may sell  
his Goods be-  
fore Convic-  
tion.

But a Felon, and even a Traitor, may *bona fide* sell his Goods for his Maintenance, any Time before the Attainder.

By the Common Law, not only the Felon's own proper Goods, but also such Goods as he had stol'n, and for which he is convicted, were forfeited to the King, unless they had been taken upon Hue and Cry, or free Pursuit.

But now by the Statute of 21 H. 8. c. 11. if any Person hath Goods stolen from him, if the Felon be there-  
found

found guilty by Evidence given by the Owner of such Goods, or the Party robbed, or by his Procurement; when such Owner shall be restored to his Goods by a Writ of Restitution, altho' he made no fresh Pursuit, or Hue and Cry.

Whatsoever is a Breach of the Peace, the same is a Forfeiture of the Recognizance. *Dalt.* 181.

Fair or Market, Court, Liberty, &c. forfeit by Non-User where the Subject has an Interest; otherwise of Parks; &c. 2 *Cro.* 155. or for Misuser of Liberties.

Forfeitures of a Recognizance taken for the Peace.

## Forgery.

IS an Offence at Common Law, for which the Offender is to stand in the Pillory, be fined and imprisoned during the Pleasure of the Court. *Ray.* 11.

'Tis likewise punishable by Statute of 5 *Eliz.* c. 14. though Mr. *Dalton* is of Opinion, Justices of Peace can't meddle with these Offenders, because they can't take Notice of the first Conviction; besides by the express Words of the Statute of 5 *Eliz.* c. 14. Justices of Assize, and of Oyer and Terminer are to hear and determine this Offence. *Cr. Eliz.* 87; 607, 697. *Co.* 9. 118.

Since the Stat. Indictments for Forgeries have been rare at Common Law.

But many Indictments have been brought since upon the Stat. for forging 1. False Deeds. 2. Writings sealed. 3. Court-Rolls. 4. Will to the Intent that the Freehold of the Lands, or the Right or Title thereof, may be troubled or charged.

Every Indictment must pursue some of the Clauses mentioned in the Stat. *quod vide.* *Dyer* 322. *B.* 1 *Lut.* 190. *Sid.* 278.

The Punishment for some Forgeries is Pillory, and to have his Ears cut off there, and his Nostrils slit, and to forfeit the Profits of his Lands to the King, during his Life, and to be committed during his Life.

For other Forgeries is Pillory, Loss of one of his Ears, and to suffer but one Year's Imprisonment without Bail.

But the second Offence in all Forgeries is Felony; 5 *Eliz.* c. 14. but is not enquirable by the Justices of Peace. *Dalt.* 387. *Cr.* 56.

The Punishment.



What is not  
Forgery.

Now Forging a Deed, by which Goods and Chattels are conveyed, is not within the Stat. neither is Razing out of a Bond of 100*l.* the Word *Libris*, and putting in the Word *Marcis*; but if he had increased the Sum, it had been otherwise. 3 *Leon.* 170. *Moor* 619.

Forging an Assignment of a Lease is not within the Stat. because it doth not charge the Lands, but only transfers an Interest which was in Being before. *Noy* 42. *Moor* 655. Nor Forgery to the Person's own Disadvantage. *Moor* 629.

To leave out a Clause in a Will which the Testator ordered to be inserted, is not Forgery; so to bring a Will written without any Direction to one *Non compos mentis* who signs it, is not Forgery.

But if the Devisor directs a Gift to one for Life, Remainder to another in Fee, and the Writer omits the Estate for Life, so that the Remainder Vests immediately upon the Death of the Devisor, this is Forgery. *Noy* 18. *Moor* 760.

Sessions have  
no Power to  
take an Indict-  
ment of For-  
gery.

Sessions have no Authority to take an Indictment for Forgery; the Justices have no Power, but what they have by Act of Parliament, and the general Words of their Commission *de omnibus aliis malefactis & transgressionibus quibuscunque* must be understood of such Crimes, as they have Power over by the several Statutes which created or enlarged their Jurisdiction. *Mich.* 9 *Anna B. R.* *Co.* 9. 118.

Forgery can have no Accessary, all are Principals. *Moor* 606. *Plowd.* 913.

Forgery made  
Felony by 2  
Geo. 2.

But by an Act made 2 G. 2. 'tis enacted, That if any Person shall falsely make, forge, or counterfeit or procure the same, or wilfully act or assist in the false making, or counterfeiting any Deed, Will, Testament, Bond, Writing Obligatory, Bill of Exchange, or Promissory Note for Payment of Money; or any Acquittance, or Receipt either for Money or Goods, with Intention to defraud; or shall utter or publish as true any false or counterfeit Deed &c. knowing the same to be false, being thereof convicted, he shall be guilty of Felony without Benefit of Clergy.

This Act does not extend to *Scotland*.

Nor shall any Attainder by this Act work any Corruption of Blood, Loss of Dower, or Disinheritance of Heirs.

Act to be in  
Force for five  
Years.

The Act to be in Force for five Years from the 20th of *June*, 1729, and from thence to the End of the next Session of Parliament.

An Indictment for forging a Deed.

Essex, ff. **T**HE Jurors, &c. do present, That A. B. If the Information and the forged Lease vary in the Name of the Lands, 'tis void; but 'tis material to allege some Parcel of Land, which may certainly be proved, and as to that you may say among other things. Hob. 272.

late of C. in the County of E. of his own Mind and false Imagination and Covin, knowing and falsely forged a certain false Deed (to wit) an Indenture, by which said Indenture one H. R. bargained and sold all his Lands called &c. with the Appurtenances in L. in the County aforesaid, to one L. M. and then and there published and caused to be read the same Indenture, and produced it in Evidence, to molest and disturb the Estate, Possession and Title and Interest of the said R. in the Lands and Tenements aforesaid, by which the said H. R. is greatly troubled and vexed in his Possession, Title and Interest to the Lands and Tenements aforesaid, with the Appurtenances, in Contempt of our said Sovereign Lord the King, and to the Damage and Grievance, and against the Form of the Statute in such Case made and provided, and also against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

Foretallers, Regrators, and Engrossers.

**B**Y Statute 5 & 6 Ed. 6. c. 14. a Foretaller is one Foretaller who buys, or causeth to be bought, any Corn, or who other Victuals whatsoever, which is coming to the Fair or Market, City, &c. to be sold, before it come to the Fair or Market: Or Persons who dissuade the Owners of such Goods to bring the same to the Market, or when there, persuade them to advance the Price, or shall make any Bargain, Contract, or Promise, for the Having or Buying the same, or any Part thereof, so coming as aforesaid, before the said Merchandize or Victual shall be in the said Market, Fair, City, &c. ready to be sold. Stat. 5 & 6 Ed. 6. c. 14.

An Ingrosser is one who buys Corn growing upon the Ground (otherwise than by Demise or Grant) or any Butter or Cheese, or other Victuals, with Intent to sell the same again for unreasonable Profit, and doth sell the same accordingly. Ingrosser who.

**Regrator who.** A Regrator is one, who in open Fair or Market doth buy and get into his own Hands, Corn or other dead Victuals, and the same doth sell again in some other Fair or Market within four Miles thereof. *Ibid.*

Butter, Cheese, Flesh, Fowl, &c. and all Victuals are Goods within the Acts of Forestalling, Ingrossing, and Regrating.

**Where and how punished.** Offenders of this Nature are punished at the Quarter-Sessions, on Proof by two Witnesses or Presentment by the Jury: And for the first Offence they forfeit the Goods, or the Value thereof, and are to suffer two Months Imprisonment without Bail: For the second Offence double the Value of the Goods, and six Months Imprisonment: And for the third Offence the Offender loseth all his Goods, must stand in the Pillory, and be imprisoned during the King's Pleasure. 5 & 6 Ed. 6. c. 14.

**Prosecution when.** The Prosecution must be within two Years after the Offence committed, and one Moiety of the Forfeiture goes to the King, the other to the Prosecutor, to be levied by *Fieri Facias* or *Capias* by the Justices.

**Persons excepted out of the Act Forestalling, &c.** Persons buying Barley or Oats to make Malt or Oatmeal, Purveyors of any City or Town Corporate, &c. and Fishmongers, Innholders, Victuallers, Butchers, Poulterers, or People living within a Mile of the Sea, buying and selling Fish by Retail at reasonable Rates, Badgers, Carriers, &c. licensed by three Justices, are excepted.

Persons transporting of Corn or Cattle, and Drivers allowed by Justices of Peace, and Things brought from beyond Sea are excepted out of the Act of Forestalling, &c.

If one buys Corn, and grinds it into Meal, and sells it contrary to Law; this is within the Statute, because the Converting it into Meal, is not an Alteration of the Corn: but if a Man buys Meal, and converts it into Starch, it has been held not to be within the Stat. because it doth not remain the same, but is altered by a Trade. *C. Rep.* 134, 135.

Apples, Plums and Hops are not within the Stat. *Cro.* 214, 114.

The Indictment ought to set forth, that the Things bought were sold again in the same Market, and thereby made dearer.

So if they buy *ea intentione ad revendend' contra formam Statuti*, 'tis punishable. *Cro. Car.* 381. 1 *Roll. Rep.* 11.

And the Indictment must be certain, and must not only say for ingrossing *magnam quantitatem straminis & fani*, or *diversos cumulos tritici*, for it should be alledged how many



many Loads of Hay and Straw, and how many Bushels of Wheat, &c. *Cr. Car.* 381. *Roll. Rep.* 134.

By Stat. 13 of *Q. Eliz.* c. 25. the said Act of 5 & 6 of *Ed. 6.* is made perpetual, and by Stat. 22 & 23 *Car. 2.* Butchers within the Cities of *London* and *Westminster*, or ten Miles thereof, are prohibited to buy fat Cattle, and sell the same to any other Butcher dead or alive: And also all Persons are restrained from buying fat Cattle in *Smithfield*, and selling the same there again. Which Act was revived in the 1st of *K. James II.* and afterwards continued by another Act 4 & 5 *W. and M. c.* 24. and by another in 11 & 12 of *W. 3. c.* 13. and further continued by an Act 5 of *Queen Anne*, c. 2. which was since explained by another of 7 of *Q. Anne*, c. 6. by which Butchers were allowed to sell to one another Calves, Sheep, or Lambs, notwithstanding the Laws formerly in Force against that Practice.

Butchers not to sell live Cattle to one another.

By 5 & 6 *Ed. 6. c.* 14. he who buys any Cattle, and sells the same again alive, within five Weeks, shall forfeit double the Value thereof.

By Stat. 13 *El. c.* 25. the Stat. of 5 & 6 *Ed. 6. c.* 14. shall not extend to Wines, Oils, Sugar, Spices, Currans, or other Foreign Victual brought from beyond Sea; Fish and Salt only excepted.

To what Stat. of 5 & 6 *Ed. 6.* shall not extend.

In an Indictment for Forestalling upon the Stat. of 5 & 6 *Ed. 6. c.* 14. you must lay that he was going to Market with the Goods. *1 Roll. Rep.* 421.

By Stat. 21 *Ja. 1. c.* 22. the Stat. of 3 & 4 *Ed. 6. c.* 21. & 5 6 *Ed. 6. c.* 14. shall not extend to Freemen of *London*, buying Butter and Cheese. But if Justices shall declare in Sessions, that the Traders in Butter and Cheese shall forbear to buy, &c. if they do not, they shall not be exempted from the Penalties of those Laws.

By 1 *Ja. 1. c.* 22. no Person shall regrate or ingross Oak Bark, with Intent to sell it again, on Pain to forfeit the same: And no Person shall forestall Hides coming to Market, &c. but in Market, or buy any except of him that killeth the Beast, to spend in his House, on Pain to forfeit 6s. 8d. for every Hide.

No Person shall regrate, &c. Oak Bark, or Hides.

In the Indictment you must say, that he was going to the Market with the Goods. *1 Roll. Rep.* 421.

Salt is a Victual, and the buying and selling thereof is within the Stat 5 & 6 *Ed. 6. c.* 14. For it is not only of Necessity of it self for the Food and Health of Man, but it seasoneth and maketh wholsom Beef, Pork, &c. Butter, Cheese, &c. and other Viands. 13 *El. Co. 3. Inst. ca.* 89. p. 195. *Cro. Car.* 231. *Rex ver. Maynard.*

Cases of Forestalling.

Apples

## Forestallers, Regrators, &amp;c.

Apples are not within the Stat. of 5 & 6 Ed. 6. c. 14. Resolved upon a Writ of Error in the Exchequer Chamber. 6 *Ja.* 1. *Co. Lit.* 18. *Cro. Ja.* 114. *Rolle* was of Opinion, that Apples were not Victual within the Stat. 5 & 6 Ed. 6. c. 14. *Moor* 595.

*Davis* was indicted and convicted for ingrossing and selling Salmon: And the Indictment was removed into *B. R.* and it was remanded; for tho' the Fishmongers may buy to carry on their Trade, yet they must not sell at unreasonable Prices. *Rolle Rep.* 11. *Rex ver. Davis.* *Cro. Car.* 314. *Fenn's Case.* *W. Jones* 320.

An Information was preferred against one *Wray* for forestalling; he confessed the Fact, and prayed the Court to mitigate the Fine: And upon this the Court took this Difference, that if the Statute ascertains a Sum for the Delinquent to pay, and does not refer it to the Discretion of the Court, the Court cannot make any Mitigation; but otherwise, where the Statute doth not prescribe a certain Sum, but saith, it shall be the double Value or the like. And upon producing Precedents, and reading the Acts of 5 & 6 Ed. 6. c. 14. *Coke* seemed to incline that the Penalty might be mitigated, because the Forfeiture is double the Value. 1 *Roll. Rep.* 194. *Rex ver. Wray.*

*H.* was indicted upon 5 & 6 Ed. 6. c. 14. for forestalling of Lead; and because it did not appear by the Indictment, that he bought it as it was carrying to Market to be sold, as it ought to do, the Indictment was quash'd. 1 *Roll. Rep.* 421.

Information for ingrossing Butter and Cheese sets forth the Quantity and Value of the Butter and Cheese, and prays the double Value, but does not say what the double Value amounted to, and good: For First, it is sufficient to demand the Value in general, without mentioning any Sum, and the Value is to be enquired by the Jury. 2dly, The Informer demanded by his Information the Moiety for himself, and said nothing of the King's Moiety, and well enough; for the Informer is to have his Moiety first. *Pasch.* 3 *Car.* 1. *W. Jones* 156. *Bede ver. Alpe.*

It was said by *Hobart* C. Justice, and *Winch* in C. B. that if a Man hath a License for forestalling, upon 5 & 6 Ed. 6. c. 14. he need but only recite that Stat. in his Pleadings, without the Pleading the 13 *El.* c. 25. for the License is grounded only on 5 & 6 Ed. 6. c. 14. and the 13 *El.* c. 25. only qualifies the Person. *Noy's Rep.* 27.

Indictment for conspiring to raise the Price of Corn, and moved to quash it, because it was without Addition of Place, but said Millers in general, quash'd.

One indicted for forestalling Butter; Exception, it does not appear to be at the Quarter-Sessions, but only at the General Sessions; but held it shall be intended the Quarter-Sessions. *Black.* 273.

## An Indictment against Forestalling.

*Essex, ss.* **T**HE Jurors, &c. do present that whereas A. B. of C. in the said County, Gent. was possessed of twenty Hogs, as of his own Goods and Chattels, and being so possessed, one J. O. of H. aforesaid in the said County, Yeoman, on the 4th Day of February, in the 8th Year, &c. at H. in the County aforesaid, and at divers other Days met the said A. B. with the said 20 Hogs coming towards the Market of L. in the said County, there to sell the Hogs aforesaid; and that he the said J. O. then and there bought and forestalled the said twenty Hogs out of the said Market, whereby A. B. did not drive the said twenty Hogs to the said Market, in Contempt of our said Sovereign Lord the King, and against the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

## An Indictment against Regrators.

*Essex, ss.* **T**HE Jurors, &c. do present that J. O. of H. in the said County, Yeoman, on the Fourth Day of February, in the Eighth Year of the Reign of our Sovereign Lord, &c. at L. in the said County, in a certain Market then held, there bought, regrated and gained into his Hands and Possession Twenty Lambs for Ten Pounds of good and lawful Money, which said Twenty Lambs he then had driven to the said Market to be sold, and that immediately afterwards (to wit) on the said Fourth Day of February, in the Year aforesaid, the said J. O. unlawfully sold in the said open Market, the said twenty Lambs to one J. S. for 12l. of like lawful Money of Great Britain, against the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord, his Crown and Dignity, &c.

## An Indictment against Ingrossing Corn.

*Essex, ss.* **T**HE Jurors, &c. do present, That J. H. of H. in the County aforesaid, Yeoman, on the Fourth Day of February, in the Eighth Year of the Reign



## Fuel and Billets.

*Reign of our said Sovereign Lord, &c. at B. and K. in the said County, bought and ingrossed of J. A. and R. G. and others, Liege People of our Sovereign Lord the King, one hundred Quarters of Wheat, and laid it together in his Houses, and there kept it with an Intent to sell it again when he pleased, whereby Wheat became much more Scarce and Dear in the Markets and Vills in the County aforesaid, to the great Detriment of the Subjects of our said Sovereign Lord the King, and against the Form of the Statute in such Case made and provided, and against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.*

## Fuel and Billets.

7 Ed. 6. c. 7.  
43 Eliz. c. 14.  
9 Ann. c. 15.  
10 Ann. c. 6.

**A**LL Billets, of what Scantling or Denomination soever, shall contain in Length three Foot and four Inches, and be of the Dimensions following, &c.

| Names of<br>Billets. | Being<br>round. |     | Half<br>round. |     | Quarter<br>Cleft. |     | How to be cut or<br>marked.                   |
|----------------------|-----------------|-----|----------------|-----|-------------------|-----|-----------------------------------------------|
|                      | In              | qr. | In             | qr. | In                | qr. |                                               |
| A single             | 72              | 1   | 0              | 0   | 0                 | 0   | No Notch.                                     |
| A Cast               | 10              | 1   | 12             | 2   | 12                | 0   | One Notch.                                    |
| A Trois              | 13              | 0   | 15             | 0   | 14                | 3   | Three in the Middle.                          |
| 2 Cast               | 15              | 0   | 17             | 1   | 17                | 0   | Two Notches.                                  |
| 3 Cast               | 18              | 1   | 21             | 1   | 21                | 0   | One at each End,<br>and one in the<br>Middle. |
| 4 Cast               | 21              | 1   | 24             | 2   | 24                | 0   | Four                                          |
| 5 Cast               | 23              | 3   | 27             | 2   | 27                | 0   | Five                                          |
| 6 Cast               | 26              | 0   | 30             | 0   | 29                | 2   | Six                                           |
| 7 Cast               | 28              | 0   | 32             | 2   | 32                | 0   | Seven                                         |
| 8 Cast               | 30              | 0   | 34             | 3   | 34                | 0   | Eight                                         |
| 9 Cast               | 31              | 3   | 36             | 3   | 36                | 1   | Nine                                          |
| 10 Cast              | 33              | 2   | 38             | 3   | 38                | 0   | Ten                                           |
| 11 Cast              | 35              | 1   | 0              | 0   | 0                 | 0   | Eleven                                        |
| 12 Cast              | 36              | 3   | 0              | 0   | 0                 | 0   | Twelve                                        |
| 13 Cast              | 38              | 1   | 0              | 0   | 0                 | 0   | Thirteen                                      |
| 14 Cast              | 39              | 3   | 0              | 0   | 0                 | 0   | Fourteen                                      |
| 15 Cast              | 41              | 0   | 0              | 0   | 0                 | 0   | Fifteen                                       |
| 16 Cast              | 42              | 1   | 0              | 0   | 0                 | 0   | Sixteen                                       |
| 17 Cast              | 43              | 3   | 0              | 0   | 0                 | 0   | Seventeen                                     |
| 18 Cast              | 45              | 0   | 0              | 0   | 0                 | 0   | Eighteen                                      |
| 19 Cast              | 46              | 1   | 0              | 0   | 0                 | 0   | Nineteen                                      |
| 20 Cast              | 47              | 2   | 0              | 0   | 0                 | 0   | Twenty                                        |

Every Billet commonly called.

>Notches.

But 9 *Ann. c. 15.* extends not to Proprietors of Trees who make Billets for their own private Use only.

One Justice of Peace, Mayor, &c. on Information that Billet is not thus mark'd, may summon before him six sufficient Men of the Place where the Billet is, and give them an Oath to inquire and present whether all or any Part of the Billet is of just and good Affise; and if they present on their Oath that it is not, then the Justice, &c. may seise it as forfeited, and deliver it to the Overseers of the Poor of the Parish, to be distributed according to their Discretions.

If an Action is brought against the Justice, &c. he may plead the General Issue, and give the Act and any special Matter in Evidence; and if he recover, shall have treble Costs.

But by 10 *Ann. c. 6.* the Laws for Assises of Fuel Acts not to extend to Billets made of Beech-wood; and no Person is to sell Billets of Beech-wood by Retail in *London, Westminster,* or Bills of Mortality, unless assised, cut or mark'd according to the Usage of marking Beech Billet, before the Act of 9 *Ann. c. 15.* or by Weight of the said Billet, if the Buyers require it.

## Game.

**A**YERY is the proper Term for a Hawk's Nest. Ayeries:  
Every Freeman may have his Ayeries of Hawks, Eagles, and Herons in his own Wood, though within a Forest. *Ch. For. c. 21.*

If one have Goshawk, and they make their Ayeries on his Land, he hath a possessory Property in them; and if another takes them before they can fly, the Owner of the Soil may have his Action of Trespass. *7 Co. 17.*

For the better preserving the red and black Game of Black Game. Grouse, &c. no Person shall, between the Second of February and the Twenty-fourth of June, burn any Ling, Heath, Furze, Gorse or Fern, on Hills, Heaths, Moors, or other Wastes, on Pain of being committed to the House of Correction, for any Time not above a Month, nor under ten Days. *4 & 5 W. & M. c. 23.*

And Justices of Peace, Lords of Manors, &c. may take away any Hare, &c. from Chapmen, &c. or any other

other Person not qualified to kill the same as are found in their Possession. *Ibid.*

## Conies.

If any Person enter wrongfully into the Ground kept for breeding Conies, though the same be or be not enclosed; and chase, take or kill any Conies without the Owner's Consent, he shall pay treble Damages and Costs, suffer three Months Imprisonment, and at his Discharge find Sureties for his Good Behaviour; the Prosecution to be in a Month, and the Conviction by Confession or Oath of one Witness. Stat. 1 Jac. 1. c. 13. and 22 & 23 Car. 2. c. 25.

If in the Night-time any Person shall kill Conies upon the Borders of Warrens, or any other Grounds made use of for keeping Conies, except Owners: And those who use Snares, Hare-pipes, or other Engines, shall pay such Sum to the Overseers of the Poor, not exceeding 10s. as the Justice shall appoint; and in Default of Payment, be committed to the House of Correction. *Ibid.*

May appeal to the Sessions, whose Judgment is final. A Commoner, who hath only Right of Common, may kill Conies upon his Common; for as they are *fera natura* when they are out of the Warren, the Lord can have no Property in them 'till taken; and therefore the Commoner may kill them. 4 Leon. 7. 2 Cro. 195. Cro. Car. 388.

## Conviction.

In Convictions for keeping Guns to destroy Game, it has been adjudged the Justices of Peace have no Jurisdiction; but an Indictment will lie against the Offender before Justices of Oyer and Terminer, &c. 4 Mod. Rep. 49.

But by Stat. 22 & 23 Car. 2. c. 25. Justices of Peace upon Examination and Conviction of the Offence may commit a Person keeping Guns not being qualified 'till he hath paid the Forfeiture incurr'd.

## Dogs.

If any Person, not qualified by Law, shall keep or use any Greyhounds, Setting-Dogs, Lurchers, Pointers, &c. to kill or destroy Game, and thereof be convicted on Oath of one or more credible Witnesses, he shall forfeit 5 l. to be levied by Distress or Sale of Goods, and for Want of Distress, be sent to the House of Correction for three Months. 5 Ann. c. 14.

Justices of Peace, Lords of Manors, and their Game-keepers, &c. may take away such Dogs from Persons not qualified to keep the same.

A Man may have a Property in a Dog, and in an Action of Trespass for taking of a Blood-hound, 10s. Damage was recovered. Cro. Eliz. 125, 126. Trover and Conversion lies for a Spaniel Dog, and Trespass for



Greyhound. *Hob.* 363. *Cro. Jac.* 463. and Action in the Case lies on a Promise to deliver a Lurcher fold.

*Keble* 680.

None shall take the Eggs of any Wild Fowl (usually Eggs.

from the Nest, or destroy them between the First of March and the Last of June, on Pain of a Year's Imprisonment; and a Forfeiture for every Bustard's Egg 8*d.* of every Bittern, Heron or Shovelard 8*d.* of

Mallard, Teal, or other Wild Fowl 1*d.* 25 *Hen.* 8.

11. to be divided between the King and Prosecutor;

and Justices may inquire, hear and determine these Offences as in Cases of Trespass. 25 *Hen.* 8. c. 11.

Destroyers of Eggs of Pheasant, Partridge, &c. are to be imprisoned three Months, unless they pay to Churchwardens for the Use of the Poor the Sum of 20*s.* 1 *Jac.*

c. 17.

No Person shall take out of the Nest any Eggs of a Falcons, Falcon, Goss-Hawk, &c. under Pain of a Year's and Hawks, &c.

Imprisonment, and Fine at the King's Pleasure. 11

7. c. 17.

The felonious Taking any Hawk from the Perch, &c.

from any Man's Person, was Robbery at Common Law;

and by Statute 37 *Ed.* 3. c. 19. If any Man find a

Falcon, Lanner, Lanneret, &c. or steal and carry away

the same, and not forthwith bring it to the Sheriffs of

the County to be proclaimed, it is made Felony; but the

Offender shall have his Clergy; but this Statute extends

only to Long-winged Hawks, and not to Goss-Hawks

or Sparrow-Hawks. *Co.* 3 *Inst.* 97, 98.

If any take away Falcons, Goss-Hawks, &c. from the

coverts where they used to breed, they forfeit 10*l.* to

be divided between the King and the Prosecutor. Stat.

7. c. 17.

By 22 & 23 *Car.* 2. c. 25. Lords of Manors, and Game-keepers:

their Royalties may by Writing under Hand and Seal,

authorise one or more Game-keepers who have Power to

use Guns, Dogs, Hays, Nets, Snares, &c. or other

engines for killing or destroying Game used by Persons

prohibited by Law to do the same.

And by Stat. 5 *Ann.* c. 14. any Lord or Lady of a

Lordship or Manor, may by Writing under his or her

Hand and Seal, empower Game-keepers within their re-

spective Lordships to kill Hare, Pheasants, Partridge, &c.

but such Game-keepers are not to kill Game, and after-

wards sell and dispose thereof without the Knowledge and

consent of the Lord or Lady of such Manor, on Pain of

commitment to the House of Correction for three Months.

*Ann.* c. 14.

By Stat. 9 *Ann. c. 25.* All Game-keepers are to be entred with a Clerk of the Peace in the Sessions; and if any Game-keeper, besides what is licensed, and his Name entred with the Clerk of the Peace, whereof a Certificate is to be made, shall kill any Hare, &c. he shall incur the Penalty of 5 *l.*

And by Stat. 3 *Geo. 1. c. 11.* All Game-keepers are to be Persons qualified by Law to kill the Game, or to be truly and properly Servants to Lords of Manors, and not Tenants, &c. under the Penalties of 5 *Ann. c. 14.* and there must not be above one Game-keeper appointed within any one Manor to kill Game, &c.

Hares.

If any Higler, Chapman, Inn-keeper, Victualler or Alehouse-keeper, shall have in his or their Custody any Hare, Pheasant, Partridge, &c. or shall buy, sell, or offer to sale any such, every such Higler, &c. upon Conviction by View, or Oath of one or more Witnesses before one Justice, shall forfeit 5 *l.* for every Hare, &c. Half to the Informer, the other Half to the Poor, to be levied by Distress and Sale of Goods, and for Want of Distress, the Offender is to be committed to the House of Correction for three Months for the first Offence; and for every other Offence four Months, without Bail, 5 *Ann. c. 14.* The Prosecution must be within three Months.

Persons not qualified killing or selling, or exposing to Sale any Hare, Pheasant, &c. are liable to the Forfeiture of 5 *l.* for every Hare, &c. And if Hare, Pheasant, &c. shall be found in the Shop, House, or Possession of any Person not qualified to kill the same, or not intitled thereto, under some Person so qualified, the same shall be adjudged Exposing it to Sale. 9 *Ann. c. 25.*

Any Person that shall kill or destroy, sell or buy any Hare, Pheasant, Partridge, &c. and shall within three Months discover Higlars, Chapmen, &c. who have bought or sold, or had in Possession any Hare, &c. so as they shall be convicted thereof, shall be discharged of the Penalties, and receive the same Benefit as any other Informer. 5 *Ann. c. 14.*

If a Constable by a Justice of Peace his Warrant, find any Hare in the House of a Person not qualified, he must carry him before a Justice of Peace; and if he do not give a good Account how he came by it, he shall be liable to the Penalty of this Act; but this is only a Sum not exceeding 20 *s.* nor under 5 *s.* 4 & 5 *W. & M. c. 23.*

Tracing, killing, or destroying Hares in the Snow, incurs a Forfeiture of 6 *s.* 8 *d.* for every Hare, by Stat. 14 &

14 & 15 H. 8. c. 10. and that is inquirable in the Sessions and Court-Leet.

Moor, Heath Game and Grouse, are within the Stat. Heath Game; of 5 Ann. c. 14. and Offenders are liable to the like Penalty of 5 l. for killing them as for other Game. Herons.

Destroying of Herons incurs a Penalty of 20 s. by Stat. 1 Jac. 1. c. 17. and by Stat. 19 H. 7. c. 11. none shall take an old Heron out of his Ground (unless it be with Hawking, &c.) under the Penalty of 6 s. 8 d. nor a young One out of the Nest, on Pain of 10 s. Forfeiture.

Persons licensed in Sessions to shoot in Birding-Pieces, are not to shoot within 600 Paces of a Heronry, &c. 7 Jac. c. 11.

Any Man may hawk and hunt at his Pleasure in his own Lands, that is not the Free Warren of another Person; and so also for other Recreations. 11 Co. 87. Hunting.

If any Person hawk or hunt with Spaniels in standing Corn, except in his own Ground, or with the Consent of the Owner, he shall forfeit Forty Shillings to the Owner of the Ground, by Stat. 23 Eliz. c. 10.

If any inferiour Tradesman, Apprentice, &c. shall hunt, hawk, fish, or fowl (unless in Company of the Master qualified by Law, they are liable to pay a Sum not under 5 s. nor above 20 s. for every Hare, Partridge, &c. killed, and to be sued as Trespassers for coming upon the Ground, wherein the Plaintiff shall recover his Damages and Costs. 4 & 5 W. & M. c. 23.

Though the Common Law justifies the Hunting of Foxes, Badgers, Otters, and other ravenous Beasts of Prey in the Ground of another Person; yet a Man cannot dig to unearth them without License; for if he does he is a Trespasser. Rol. Abridg. 558.

If a Man in Hunting starts a Hare upon his own Land, he may pursue it on the Ground of another, and the Hare is still his own Property from its Being at first on his own Lands, the Property of Hares being in them, on whose Ground they remain: But if one starts a Hare upon another Man's Ground, and hunt and kill it, he is subject to an Action, though it is but seldom brought. Cro. Car. 553.

An Action was brought against a Person for entering another Man's Warren; the Defendant pleaded, that there was a Pheasant on his Land, and his Hawk pursued it into the Plaintiff's Ground; and it was resolved that this doth not amount to a sufficient Justification; for in this Case, he can only follow his Hawk, and not take his Game. 28 Ed. 3. Poph. 162.



A Man may justify killing the Dogs of Trespassers, hunting upon his Ground. 2 Cro. 44. *Wadburst* vers. *Damme*, 3 Leon. 28. But *Rol. Abridg.* 567. *econtra*, *Lewis's Case*.

## Indictments.

Destroyers of the Game may be indicted in the Sessions, and there punished, though most Penalties on late Statutes are levied on Conviction by one Justice.

A Man was indicted for shooting of Game without setting forth that he was not qualified so to do: It was order'd by the Court, that he should shew himself to be qualified, to discharge himself. 2 Keb. 582.

## Licenses.

There are Licenses of Pleasure, and Licenses of Profit; a License for Pleasure is to hunt or hawk, &c. in a Forest, Chase, &c. whereby a Man doth not gain any Property in the Game he takes; and he cannot hawk or hunt with any more in Company than himself. A License for Profit is where a Man has a Warrant to kill and carry away Game, and then he may hunt with more Company.

## Nets.

Nets, Hays, Snares, Engines, &c. for destroying Game, may be seized by Game-keepers. 22 & 23 Car. 2. c. 25. And Constables having a Warrant of two Justices, may search Houses for Nets, Dogs, &c. and the same take, carry away, and destroy as Things prohibited. 7 Jac. 1. c. 11.

Indictment for not aiding a Constable upon Demand, to search by Warrant for Nets, quash'd, for a Constable has not that Power in that Business. *Black.* 86, 87.

And Persons of mean Condition, convicted by Confession or Oath of one Witness, before two or more Justices, of taking or destroying Game with Nets, Dogs, &c. are to be committed to Gaol for three Months without Bail, unless they pay 20s. for every Bird, &c. to the Use of the Poor. 7 Jac. 1. c. 11.

If any Person not qualified, shall keep or use any Nets, Tunnels, Hare-pipes, Snares, or other Instruments to destroy the Game, he shall forfeit a Sum not exceeding 20s. nor under 5s. for every Hare, Partridge, &c. taken by Stat. 4 & 5 W. & M. c. 23. But by Stat. 5 Ann. the Penalty is 5*l.* leviable by Distress, &c.

## Pheasants and Partridges.

None shall take Pheasants and Partridges with Engines in another Man's Ground without License, under the Penalty of 10*l.* Stat. 11 H. 7. c. 17.

And by Stat. 23 Eliz. c. 10. No Person shall kill or take Pheasant or Partridge, with Net or Engine in the Night-time, on Pain of forfeiting 20s. for every Pheasant, and 10s. for every Partridge; and if not paid in ten Days, one Month's Imprisonment, &c. the Forfeiture

ture to be recovered in any Court of Record, and divided between the Lord of the Manor and the Prosecutor.

The Killers or Takers of any Pheasant, Partridge, &c. convicted by Confession, or Oath of two Witnesses before two Justices, shall be imprisoned three Months, unless they pay to the Use of the Poor 20*s.* for every Fowl, &c. taken or destroyed. 1 *Jac.* 1. *c.* 27.

If any destroy any Pheasant or Partridge between the First of *July* and the Last of *August*, he forfeits 40*s.* to the Poor, or must suffer one Month's Imprisonment for every Time of Hawking, &c. and 20*s.* for every Pheasant and Partridge killed. 7 *Jac.* 1. *c.* 11.

Indictment on Stat. 23 *Eliz.* *c.* 10. for taking Partridges *cum retiis*, and quash'd, because there is no such Word as *retiis*, it should be *retibus*. Proceedings may be upon this Statute at the Sessions by Way of Indictment, or before a Justice by Examination of Witnesses; but the Justice can only take the Examination of the Witnesses, and bind over to the next Sessions. 3 *Bull.* 178. *Rex* *vers.* *Rivet*.

Persons having Pheasant, Partridge, &c. in their Possession, and not giving a good Account how they came by the same, &c. shall forfeit a Sum not exceeding 20*s.* nor less than 5*s.* for every Pheasant or Partridge, to be levied by Distress, and in Default be committed to the House of Correction for a Month. 4 & 5 *W. & M.* *c.* 23.

But Stat. 5 *Ann.* *c.* 14. increases the Penalty to 5*l.* for every Pheasant, &c. and three Months Imprisonment on Non-payment, Conviction before one Justice.

By Stat. 7 *Jac.* 1. *c.* 11. Persons are not to fire at Game within 100 Paces of a Pigeon-house; and a Forfeiture is inflicted for killing of Pigeons, *viz.* 20*s.* for every Pigeon killed for the Use of the Poor, or the Offender is to be committed for three Months; but after he hath been committed one Month, he may be discharged on becoming bound before two Justices, with two Sureties in 20*l.* with Condition not to commit the like Offence. Pigeons.

The Qualifications to keep Greyhounds, Setting-Dogs, &c. to take Game, by Stat. 1 *Jac.* 1. *c.* 27. is an Inheritance of 10*l.* *per Annum*, Lease for Life of 30*l.* *per Annum*, or 200*l.* Personal Estate. Qualification to keep Dogs, Guns, &c.

But by Stat. 22 & 23 *Car.* 2. *c.* 25. the Qualification to keep Guns, Dogs, &c. is 100*l.* *per Ann.* of Inheritance, or for Life, in a Man's own or his Wife's Right, or a Lease for 99 Years of 150*l.* *per Annum*, and those who have a Free Warren, Lords of Manors, and the

Son and Heir of an Esquire, or other Person of higher Degree, are qualified to keep Guns, Greyhounds, &c. Persons not qualified, keeping Guns, are liable to a Penalty of 10*l.* Stat. 33 *H. 8. c. 16.* 22 & 23 *Car. 2. c. 25.*

And Persons qualified to keep Guns may take away Guns from those that are not, and break them. *Ibid.*

Search for  
Game.

Game-keepers, and others by Warrant from a Justice of Peace, may search the Houses of Persons not qualified, suspected to keep Guns, &c. and seise them for the Use of the Lord of the Manor, or otherwise destroy them. 22 & 23 *Car. 2. c. 25.*

Shooting.

If any Person (unqualified) shall shoot at any Pheasant, Partridge, Grouse, Heathcock, Duck, &c. and thereof shall be convicted by two Witnesses, or by Confession before two Justices, he shall be committed for three Months, or pay 20*s.* for every Fowl. 7 *J. 1. c. 11.*

Soldiers.

If any Officer or Soldier without Leave, shall take or destroy any Hare, Pheasant, Partridge, or any Sort of Fowl, Poultry, &c. he shall on Conviction forfeit, if an Officer, 5*l.* and if a Soldier 20*s.* to be paid by the Officer, commanding in chief, and distributed to the Poor; and for Default of Payment within two Days after Conviction thereof, upon Oath before a Justice of Peace, and Demand made by a Constable, &c. such Officer shall lose his Commission. Stat. 10 *Geo. c. 3.*

Swans.

One may prescribe to have Game of Swans within his Manor, as well as a Warren or Park, and none may have a Swan-mark, unless it be by Grant of the King, or his Officers authorised, or by Prescription. 22 *Ed. 4. c. 6.*

He who steals Swans Eggs out of their Nests, shall suffer a Year's Imprisonment, and be fined. 11 *H. 7.* And where there are Swans marked and pinioned or unmarked, if kept in a private River, it is Felony to take them: As it is likewise to steal Partridges, Pheasants, &c. reduced to Tameness, knowing them to be tame. *H. P. C. 68. Crompt. Jurif. 167.*

Wild-Fowl.

If any Person, between the First of *July* and the First of *September*, shall drive and take any Wild-Duck, Teal, Widgeon, or any other Water-fowl, by Hays, Tunnels, or other Nets in any Fens, Marshes, or other Places of Resort for Wild-fowl in the molting Season, and be proved by the Oath of one Witness before one Justice, he shall forfeit 5*s.* for every such Wild-Duck, &c. one Moiety to the Informer, and the other to the Poor,



Poor to be levied by Distress and Sale, and for want of Distress to be committed to the House of Correction for any Time not exceeding one Month, nor less than fourteen Days, there to be whipped, and kept at hard Labour.

Stat. 9 Ann. c. 25.

Persons shooting Duck, Mallard, Teal, &c. are liable to a Penalty of 20s. for every Duck, &c. 7 Ja. 1. c.

11. *Vide ante* Shooting.

By Stat. 4 & 5 W. & M. c. 5. 'tis enacted, that in Convictions for killing Game, &c. no *Certiorari* is to be allowed, unless the Party convicted shall be bound to the Prosecutor in the Sum of 50*l.* with such Sureties as the Justice before whom he was convicted shall think fit, conditioned to pay the Prosecutor full Costs, to be ascertained upon Oath within fourteen Days after the Conviction, or a *Procedendo* allowed.

By Stat. 8 Geo. c. 19. It shall be lawful against any Person liable to a Penalty on Conviction, before a Justice of Peace for any Offence committed against any Law, for the better Preservation of the Game, to proceed to recover the said Penalty, either by Information and Conviction before a Justice of Peace, or to sue for the same by Action of Debt in any Court of Record; and the Plaintiff to have double Costs.

Penalties recoverable by Action, as well as before Justices.

But the Suits and Actions to be brought, are to be commenced before the End of the next Term after the Offence committed, and there must not be a double or second Prosecution, one on this Law, and another on the Laws already in Being.

Any Person prosecuted for putting Stat. 4 & 5 W. & M. c. 5. in Execution, may plead the general Issue, and give the special Matter in Evidence.

And if the Verdict pass for the Defendant, or the Plaintiff become Non-suit or discontinue his Suit, Defendant shall have treble Costs.

The Defendant was convicted upon the Stat. 5 Ann. c. 4. for keeping a Greyhound and killing four Hares not being qualified; but it was by his own Confession, and not upon the Oath of one credible Witness, as that Stat. directs: It was objected, that the Justice of Peace having no Power in this Case, but what he derives from the Statute; therefore it ought to be pursued, especially where 'tis Penal: But adjudg'd, that the Confession of the Offender is within the Intention, tho' not within the Letter of the Act; and 'tis the strongest Evidence against the Person confessing; therefore when a Justice convicts upon a stronger Evidence than is requir'd by the Statute,

Confession of the Party the strongest Evidence, &c.

such Conviction must be good. *Hill. 9 G. 1. B. R. The King ver. Adams.*

It was held *per Cur.* that a Game-Keeper cannot take away a Gun from an unqualified Person by the Statute, without a Warrant from a Justice of Peace. *Comberbach 183. Carpenter ver. Adams,*

### A Warrant or Deputation from a Lord of a Manor to a Game-keeper.

22 & 23 C. 2.  
c. 25.  
5 Ann. c. 14.

**T**O all People, to whom these Presents shall come, I T. C. of, &c. Esq; Lord of the Manor, of, &c. (by Virtue of several Acts of Parliament lately made for the Preservation of Game) have nominated, authorized, and appointed, and by these Presents do nominate, &c. A. C. of, &c. to be my Game-keeper, of, and within my Manors of, &c. in the County of, &c. aforesaid, with full Power and Authority, according to the Direction of the Statutes in that Case made and provided, to kill Game for my Use, and to take and seize all such Guns, Greyhounds, setting Dogs, &c. Ferrets, Trammels, Hays, or other Nets, Snares, or Engines for taking, killing, or destroying of Hares, Pheasants, Partridges, or other Game, as within the said Manors of, &c. and the Precincts thereof, shall be kept or used by any Person or Persons not legally qualified to do the same: And further to act and do all, and every Thing and Things which belongeth to the Office of a Game-keeper; according to the Direction of the said Acts of Parliament, for which this shall be his sufficient Warrant. Given, &c.

These Warrants are to be entered with the Clerk of the Peace. 9 Anna, c. 25.

A Warrant upon the Statute of 4 & 5 W. & M. c. 5. to enter into the Houses, &c. of suspected Persons, and search for Hare, Partridge, Pheasant, Fish, Fowl, or other Game, and to apprehend, and bring the Offender before the next Justice to be examined thereupon, and proceeded against according to Law.

Essex, ss. **F**Orasmuch as Complaint hath been made unto me this present Day, That the Game in His Majesty's Forest of Waltham, hath been very much of late destroyed by many idle Persons of your Parish contrary to the Form of the Statute in that Case made and provided: These are therefore in His Majesty's Name, strictly to charge and command you, and every of you, That you, some or one of you do forthwith, upon Sight hereof, enter into and search the Houses, Out-houses, Yards, and other Places belonging to the Houses within your said Parish, of all and every Person and Persons whom you shall suspect or be informed to have any Hare, Partridge, Pheasant, Fish, Fowl, or other Game, and wheresoever you shall find any such, to apprehend, or cause to be apprehended, all and every Person or Persons suspected to have unlawfully come by the same, and them, and every of 'em, as also those in whose Houses or Places belonging to them any such Hare, Partridge, Pheasant, Pigeon, Fish, Fowl, or other Game, shall be found, to bring before me, or some other of his Majesty's Justices of the Peace for this County, to answer all and singular the Premises and Matters aforesaid, and farther to be proceeded against according to Law, whereof, &c.

4 & 5 W. & M. c. 5.  
One or more Justices.

### An Information against a Person for selling of Game, &c.

The Information of C. D. &c. taken, &c.

**T**HIS Informant saith, That on, &c. last past, he saw G. D. of, &c. at his House situate, &c. sell and dispose of one Hare, to, &c. for, &c. or saw him with Greyhounds, kill and destroy one Hare, &c. in a Ground called, &c. situate, &c.

A War-



A Warrant against a Chapman, Higler, &c. for having in his Possession, or any other Person selling, or unlawfully killing Hares, Pheasants, &c.

5 Annæ c. 14.

**W** Hereas C. D. of, &c. hath this Day made Oath before me, That on, &c. last, he saw in the Possession of G. D. at his House situate in, &c. one Hare or one Partridge, &c. or offer to sell one Hare, &c. or saw him with Greyhounds, kill and destroy one Hare in the Ground called, &c. in the Parish of, &c. not being legally qualified to do the same, and contrary to an Act of Parliament in that Case made, whereby he hath forfeited the Sum of 5*l*. These are therefore in His Majesty's Name, to Command you forthwith to levy the said Sum of 5*l*. by Distress and Sale of Goods of the said G. D. so forfeited as aforesaid, and that you do pay one Moiety thereof to the said C. D. and the other Moiety to the Church-wardens or Overseers of the Poor of the said Parish of, &c. where the Offence was committed, for the Use of the said Poor according to the Direction of the Act of Parliament, and for want of such Distress, that you do convey the said G. D. to the House of Correction, there to remain for the Space of three Months. Given, &c.

The like Warrant *mutatis mutandis* for buying, selling, or offering to Sale an Hare, Partridge or Pheasant, or for keeping or using any Greyhound, setting Dog, Hay, Tunnel, &c. or other Engine not being qualified by Law to keep it.

A Warrant to levy the Forfeiture, against a Person for keeping Greyhounds, setting Dogs, &c. not being qualified.

5 Annæ c. 14.

**W** Hereas it has been duly proved before me, That C. D. of your Parish hath for some Time last past, kept and made use of two Greyhounds or setting Dogs, &c. for the killing and destroying of Game without having any visible Estate, or other legal Qualification for doing the same contrary to an Act of Parliament in that Case made: These are therefore to Command you to levy the Sum of 5*l*. (which he hath forfeited by the Offence aforesaid) on the Goods of the said

aid C. D. by Distress and Sale thereof, rendring to him the Overplus, if any, and that you do distribute and dispose of the said Forfeiture as followeth; one Half thereof to G. D. of, &c. as Informer, and the other Half Part thereof for the Use of the Poor of the said Parish of, &c. Given, &c.

## Warrant against a Person for hunting with Spaniels in standing Corn.

Whereas Complaint hath been made unto me by C. D. 23 Eliz. c. 10. and E. F. of, &c. Gent. That A. B. of their Parish, on, &c. last past, hunt with Spaniels in the Ground of the said C. D. called, &c. situate, &c. wherein there was then Corn standing and growing, without his Consent, to the great Damage of the said C. D. and contrary to Law: These are therefore in His Majesty's Name to Command you to bring the said A. B. before me or some other of His Majesty's Justices of the Peace for this County, to be examined concerning the Premises or to give Bond with Sureties for his Appearance at the next General Quarter-Sessions of the Peace to be holden for the County aforesaid; and if he shall refuse so to do, that then you do safely convey him to the Gaol of, &c. and deliver him to the Keeper thereof, commanding you the said Keeper, to receive the said A. B. into your Custody, and him safely to keep, until he shall find Sureties as aforesaid. Given, &c.

A Bond of Fifty Pounds, to be entred into by the Offender to the Prosecutor after Conviction, upon the Statute of 4 E. 5 W. & M. c. 5. for Preservation of the Game, upon Condition to pay to the Prosecutor (in Case of Removal of the Conviction by *Certiorari*) his full Costs, within a Month after such Conviction so removed shall be confirmed, or a *Procedendo* thereupon awarded.

NOW all Men by these Presents, That we C. T. of the Parish of St. John's Hackney, in the County of Middlesex, Glover, D. P. of the same Parish and County, Carpenter, and J. K. of the same Parish and County, Blacksmith, acknowledge our selves to be held and firmly bound to S. M. of the same Parish and County, Husbandman, in fifty Pounds of Good and Lawful, &c.

Whereas

4 & 5 W. & M.  
cap. 5.

**W** Hereas the above-bound C. T. was lately convicted before C. D. Esq; one of His Majesty's Justices of the Peace for the County of Middlesex above-written, at the Prosecution of the above-named S. M. of keeping and using Greyhounds, Setting-Dogs, Coney-Dogs, Lurchers, Ferrets, Cross-bows, Hays, Nets, Tunnels, Low-Bells, Hare-Pipes, Quail-Pipes, Snares, and other Engines and Instruments for the Destruction of the Game of this Kingdom, not being thereunto qualified by the Laws of this Realm: And whereas the said C. T. hath since by His Majesty's Writ of Certiorari removed the said Conviction, and the Proceedings thereupon into His Majesty's Court of King's Bench: The Condition therefore of the Obligation above-written is such, That if the said C. T. do, and shall (according to the true Intent and Meaning of the Statute in that Case made and provided) well and truly pay or cause to be paid unto the aforesaid S. M. his full Costs and Damages, to be ascertained upon the Oath of the said S. M. which he shall sustain, or be at in any wise, touching or concerning the said Prosecution of the said Conviction, or in making his Defence upon the Removal thereof within one Month next after the said Conviction shall be confirmed, or His Majesty's Writ of Procedendo shall be awarded by the said Court of King's Bench thereupon; that then the Obligation above-written to be void and of no Effect, or else to stand and be in full Force and Virtue.

## Gaming.

One Justice  
may enter  
Gaming house,  
and commit  
Gamesters, &c.

**T** H O' Gaming be not unlawful in itself, yet it is so, as prohibited by several Statutes, to certain Persons, and to be used in certain Places. 2 Vent. 175.

Every Justice of Peace may as well within Liberties as without, enter into any common House or Place where any playing at Cards, Dice, Tables, or other Games prohibited by Law, shall be suspected to be used, and may as well arrest the Keepers of such Place, as the Players there, and imprison them till they find Sureties not to play any more, &c. 33 H. 8. c. 9.

And Mayors, Sheriffs, Constables, &c. not searching Places suspected of unlawful Gaming, are subject to a Penalty of 40s. and the Statute against using unlawful Games is to be proclaimed by Justices every Quarter-Sessions in open



open Court, and four Times a Year in the Market-Place.

*Ibidem.*

It is an Article of Enquiry at Sessions, if any one keeps any Place for unlawful Games, and *Anno 29 Eliz.* several Persons were taken at a Gaming-house in *Staffordshire*, by one of the Justices of Peace of that County, and were indicted thereof, and he that kept the House was fined 5*l.* and every one that played, 20*s.* and they were committed to Gaol till they paid their Fines.

H. was convicted of keeping a Cock-pit six Days, the Court agreed it an unlawful Game within Stat. 33 H. 8. c. 9. and took their Measures for his Fine at 40*s.* a Day, tho' the Indictment was at Common Law, and fined him 12*l.* *Trin. 27 Car. 2. B. R. 3 Keble 510. Rex v. Horwel.*

One Justice may also commit Persons playing in such Houses, until they find Sureties not to play any more, and they forfeit 6*s. 8d.* for every Offence, and Artificers, Apprentices, &c. using Plays out of *Christmas*, are liable to a Penalty of 20*s.* 33 H. 8. c. 9. Persons Gaming may be committed.

And now by Stat. 2 G. 2. where it shall be proved on Oath by two or more Witnesses, before any Justice, as well as where he shall find on his own View, that any Person hath used unlawful Games, contrary to the Stat. of 33 H. 8. c. 9. the Justice shall have Power to commit such Offender to Prison without Bail, till he shall enter into Recognizance, with Sureties or without, at the Justice's Discretion, that he shall not any more play at such unlawful Game.

By 16 Car. 2. c. 7. If any Person shall by Fraud in playing at Cards, Dice, Tables, &c. or by bearing a Part in the Shares or Stakes, or in betting on the Heads of such as play, &c. win any Sum of Money, or other valuable Things whatsoever, the Person so offending shall, *ipso facto*, forfeit treble the Value of the Money, or other Thing so obtained, and the Informer or Prosecutor recover treble Costs. Liable to pay treble the Value.

And further, That if any Person shall play at Gaming, (other than with or for ready Money) or shall bett on the Sides of those that do, and shall lose any Sum exceeding 100*l.* at any one Time, and do not pay down the same at the Time it is lost, the Party losing shall not be compelled to make it good. All Judgments, Bonds, Bill, &c. enter'd into for Satisfaction shall be void, and the Person winning is to forfeit treble the Value of all his Winnings above 100*l.* and the Informer to have treble Costs. 16 Car. 2. c. 7. If lose more than 100*l.* not liable to make it good, and all Securities, &c. void.

By

Two or more Justices may cause Gamblers to appear before them.

Forfeit their Recognizance on playing, &c.

If any one cheat at Play, or win above 10 l. at one Time, to forfeit five Times the Value, and liable to the Pillory.

If any assault or challenge at Play.

Person losing above 10 l. may recover his Money again, and after three Months any one may bring the Action.

By Stat. 9 Ann. c. 14. Any two or more Justices of the Peace may cause such Persons to be brought before them as they suspect have no visible Estate or Profession to maintain themselves; and if they do not make it appear that the Principal Part of their Expences is maintained without Gaming, then the Justices may require Securities for their good Behaviour for twelve Months; and if they cannot find sufficient Sureties, they are to be committed to the Common Gaol. 9 Ann. c. 14.

If they play or bett during the Time, to the Value of 20 s. they forfeit their Recognizances. Stat. *ibid.*

And if any Person, by Fraud in playing at Cards, Dice, &c. or by bearing a Share in the Stakes, or by betting, shall win to themselves, or any other, any Sum or Sums of Money, or other valuable Thing or Things whatsoever, or shall win any Sum above 10 l. at one Time and being convicted of either of the said Offences by Indictment or Information, shall forfeit five Times the Value of the Sum or Sums of Money, or other Thing so won as aforesaid; and in Case of such Fraud as aforesaid shall be deemed infamous, and suffer such corporal Punishment as in Cases of wilful Perjury; and such Penalty to be recovered by such Person or Persons as shall sue for the same by such Action as aforesaid. 9 Ann. c. 14.

Any one that assaults, and beats, or challenges to fight any other Person on Account of Money won at Gaming being convicted thereof, shall forfeit all his Goods, and be imprisoned during two Years. *Ibid.*

Any Person, playing at Cards, Dice, &c. or betting and losing the Value of 10 l. and paying the same money within three Months sue for and recover the Money lost from the Winner, with Costs, &c. and if the Loser do not sue, any other Person has Power to sue and recover the same, and treble the Value, with Costs; one Moiety to the Prosecutor, and the other to the Poor. And all Notes, Bills, Bonds, or other Securities given for Money won at Gaming, or for repaying any Money knowingly lent for such Gaming or Betting, shall be void, and of no Effect. *Ibidem.*

On an Action brought in a Case of Gaming, the Defendant, in Consideration the Plaintiff would give him 50 s. promised to give the Plaintiff 40 s. if ever he play'd at certain Game for Money or Wine.

It was moved, that there was no such Play as the Game mentioned; but the Action was adjudged good, and the Court approved of the Consideration to restrain Gaming. *Raym. Rep. 13.*

Gamesters becoming Bankrupt shall have no Relief out of their Estates. *Vide Stat. 5 Geo. c. 24.*

Gamesters becoming Bankrupt.

By Stat. 2 & 3 P. & M. c. 9. All Licenses to keep Houses or Places of unlawful Games shall be void.

By Stat. 39 Eliz. c. 4. Fencing and Stage-Plays are unlawful Games; for the Offenders in that kind are made Vagabonds.

One Justice may commit for cheating at Play. *Cro. Car. 235.*

By Stat. 9 Ann. c. 14. All personal Security given for Money won or lent at Play shall be void; and if 'tis in Lands, &c. it shall come to the Person to whom the same should come after the Death of the Mortgagor; and all Conveyances made to prevent it from coming to him, shall be fraudulent and void.

All Securities for Money won at Play are void.

All Persons liable to be sued by Virtue of Stat. 9 Ann. c. 14. shall be obliged and compellable to answer upon Oath such Bill or Bills as shall be preferred against him or them, for discovering the Sum and Sums of Money, or other Thing so won at Play, as aforesaid.

Gamesters obliged to answer upon Oath.

*N. B.* Before this Act the Winner was not compellable to discover or answer a Bill in Equity, but might have demurred, it being to make him liable to Forfeitures and Penalties.

It has been resolved, that if the Guests in any Inn or Tavern call for a Pair of Dice or Tables, and for their Recreation play with them; or if any Neighbours play at Bowls for their Recreation, &c. that this is not within the Statute, for these Houses are not kept for Lucre or Gain.

Playing for Recreation not within the gaming Acts.

In the Case of *Whitgrave and Chancey*, 1 Lut. 180. all the Court was of Opinion, that *Indeb. Assumpsit* doth not lie for Money won at Play; but it ought to be a special Declaration.

If a Ring of 20 *l.* Value be lost and delivered at Play, and Bond given for 100 *l.* more, lost at the same Time, the Bond is not within the Statute of 16 Car. 2. c. 7. *Danvers and Thistlebayr's Case*. 1 Lev. 244.

What Sums are within the gaming Acts.

80 *l.* was won at one Meeting, and another Meeting was appointed, and the Defendant won 70 *l.* more, above 100 *l.* in all; the better Opinion was, that it was not within the Statute, tho' if it had been pleaded, that the several Meetings were purposely to elude the Statute, it might be otherwise. 2 Mod. 54. *Hill and Pheasant* in C. the Case of *Edgbury and Rosendale* was cited.

If one lose at one Time above 100 *l.* on Tick, tho' it be different Persons, yet it is within 16 Car. 2. c. 7. *Hudson and Malin's Case*, Trin. 28 Car. B. R.

But



If a Wager on  
a collateral  
Matter, not  
within the Act.

But if a Wager be on a meer collateral Matter, and the Event doth not depend on the Success of the Game, it is not within the Statute.

One owes me Money *bona fide* on Bond a Year ago, now we meet, and I agree if this Horse wins I will deliver the Bond up; this is within the Intent of the Act.

There is a Proviso in 9 Ann. c. 25. That any Person may play in the King's Palace, while he is there resident, &c.

### A Warrant to apprehend a Person for unlawful Gaming, having no visible Estate.

9 Ann. c. 25.

**W**Hereas we are informed, That C. D. of, &c. doth frequently use and play at Cards, Dice, and other Games in the Parish of, &c. and we have good Reason to suspect, that the said C. D. hath not any Estate, or follows any Employment to maintain himself; but that he lives mostly by Gaming and Sharping other People: These are therefore in His Majesty's Name to require you to apprehend the said C. D. and bring him before us, or some other Justices of the Peace, to answer what shall be objected against him by, &c. and that he may be examined concerning the Premises, and dealt with according to Law. Given, &c.

### The Warrant of Commitment.

Effex, ff. **W**Hereas we whose Names are hereunto subscribed, two of His Majesty's Justices, &c. having just Reason to suspect, That D. T. of Hornchurch in the said County, hath no visible Estate, Profession, or Calling, but doth for the most part support himself by Gaming, did on the Day of the Date hereof cause the said D. T. to be brought before us, and upon his Examination, and other due Proof, it appeareth unto us, that the principal Part of his Expences is maintained by Gaming; and he being required by us at the same Time to find Securities for his good Behaviour for twelve Months, refused so to do. These are therefore to require you to convey the said D. T. to the common Gaol for the said County; commanding you the Keeper thereof to receive him into your Custody, there to remain till he shall give such Security as aforesaid. Given, &c.

Commitment of a Person for keeping  
an unlawful Gaming-house.

**W**Hereas C. D. has this Day been convicted before me,  
for keeping an unlawful Gaming-house in the Parish  
&c. and refusing to give Security for his not keeping such  
Gaming-house for the future, as the Acts of Parliament in  
such Cases require: These are therefore to command you to  
convey the said D. C. to the common Gaol of, &c. aforesaid,  
thereby requiring you the said Keeper of the said Gaol him  
safely to keep in your Custody, until he shall give Security as  
aforesaid, and pay the Sum of 40s. which he hath forfeited  
for the Offence aforesaid. Given, &c.

An Indictment for keeping a Gaming-  
house.

**T**HE Jurors, &c. do present, That C. D.  
of H. in the said County, Shoe-maker, on  
the 4th Day of February, in the eighth Year of the Reign,  
&c. and at divers other Days and Times before the Day of  
Inquisition, kept and now doth keep a Common Inn at H.  
in the County aforesaid, and there permitted divers suspect-  
Persons to play at Cards and Dice, as well in the Day  
as in the Night-time, after due and lawful Hours, to the  
inconvenience of the Inhabitants there, and to the ill Example  
of others, Subjects of our said Sovereign Lord the King, and  
against the Form of the Statute in such Case made and pro-  
vided, and against the Peace of our Sovereign Lord the King,  
his Crown and Dignity, &c.

Greyhound. See Game.  
Garden. See Hedge-breaking.

Gaol and Gaoler. Vide Prisoner.

By Stat. 1 E. 3. c. 7. the Justices of either Bench,  
Assize, and Gaol-Delivery shall hear and determine  
Plaints made against all Sheriffs and Gaolers.

By Stat. 5 H. 4. c. 10. Justices of Peace shall imprison  
none but in the common Gaol. But by 11 & 12 W. 3.

c. 19. (Murderers and Felons only are declared to be meant saving to Lords and others (who have Gaols) their Franchise in this Case. *Cro. Eliz.* 830.

And therefore the Justices of Peace offend, who commit Felons and others to the Compter in *London*, and other Prisons than the common Gaols. *Trin.* 10 *J.* 1 *C. B.* 9. *f.* 119. *Co. 2. In.* 43. *Cro. Eliz.* 289. *See* *vage* *versus Tateham.*

By Stat. 19 *H. 7. c.* 10. the Sheriff of every County shall have the Keeping of the common Gaol there, except such as are held by Inheritance or Succession; all Letters Patent of the Keeping of Gaols for Life or Years are annulled and void.

Every County hath two Gaols, one for Debt, which may be in any House where the Sheriff pleases, the other for the Peace and Pleas of the Crown, which is the County Gaol, and the Gaoler is the Keeper thereof. *Latch* 10. And if a Gaoler voluntarily permit a Felon to escape it is Felony; tho' he may kill an unruly Prisoner, and it be no Felony; but if it be by hard Usage it is Murder. And if the Gaol be broken by Thieves, the Gaoler is chargeable, but not if it be broken by Enemies. 3 *Inst.* 5. *Co. 9. Rep. f.* 95. *b.* 3 *Cro.* 815.

Gaoler refusing to receive a Prisoner.

If a Gaoler refuse to receive a Felon sent to him by lawful Warrant, &c. he is liable to be fined, and the Township shall keep him till the Gaol-Delivery. *Dalt.* 340.

Breaking Prison.

If a Felon break Prison, 'tis Felony; but if the Doors are open, and he go out 'tis not, and Escaping from the Hands of a Constable, where lawfully detained, is Breach of Prison.

Rescuing a Prisoner.

Rescuing of a Felon is Felony in the Rescuer; and if a Prisoner be rescued at the Gallows, or going to Execution, it is a Breaking of Prison; and if a Gaoler permits a voluntary Escape 'tis Felony in him; but if the Escape is only negligent, and not voluntary, 'tis Felony in the Prisoner, and a Misdemeanor only in the Gaoler. *Dalt.* 377, 378.

Relief of Prisoners in Gaol.

For the Relief of Prisoners in Gaol, Justices in Sessions have Power to tax every Parish in the County, not exceeding 8 *d.* per Week, and this Tax may be levied every Sunday by the Church-wardens, and quarterly paid to the Constables; or if in a Corporation, to the chief Officer, and such Officer, &c. is to pay the same to the Collector every Quarter-Sessions, who is to distribute it weekly; Officers neglecting their Duty are liable to forfeit. 14 *Eliz. c.* 5.



Upon Presentment by a Grand Jury in Sessions, that Gaols out of Repair.

Gaol is out of Repair, insufficient, or inconvenient, the major Part of the Justices may agree upon a Sum for the Rebuilding or Repairing thereof, and by Warrant under their Hands and Seals may order the same to be levied upon the several Hundreds and Divisions, by a proportionable Rate. 11 & 12 W. 3. c. 19. And if any Person refuse to pay the Rate, one Justice present at the Sessions may make a Warrant to the Collector to levy it by Distress and Sale, &c. and if not paid in four Days, then the Goods may be appraised by two Inhabitants residing where taken, or other sufficient Persons, and sold by the Collector, returning the Overplus; and Receivers are to be appointed by Justices in Sessions on their giving Security to be accountable for the Money. 11 & 12 W. 3. c. 19. 10 Ann. c. 14.

Justices may covenant with Persons for building, finishing, or repairing, &c.

The aforesaid Act of 11 & 12 W. 3. c. 19. was to continue for ten Years; but by Stat. 10 Ann. c. 14. 'tis continued from the first of May 1712, for seven Years, and from thence to the End of the next Session of Parliament:

Justices in the County have no Power to meddle in Corporations, but Head Officers only. 14 Eliz. c. 5.

Justices of every County, at Quarter-Sessions may provide (if needful) a Stock of such Materials as they think convenient for setting poor Prisoners at Work by such Ways as other County Charges are by Law provided, to pay and provide Persons to oversee and set such Prisoners at Work; and make such Orders about the Premises as shall be thought needful, and for punishing Neglects and other Abuses, and bestowing the profits arising from the Prisoners Labour for their Relief, and may alter and revoke such Orders when necessary. No Parish to be rated above 6d. in the Pound toward the Premises.

Justices may provide Materials to set Prisoners to Work.

Sheriff, or any other Person, having the Custody of the Gaol, may by Consent of three Justices (Quor. one) in Time of Infection, remove sick and other Persons from the Gaol, and provide safe Places for them; Justices in Corporations have the same Power.

When a Sheriff may remove Prisoners.

Justice, or Quarter-Sessions, may settle what Persons shall pay that are under Arrest for each Night's Lodging or other expences. Stat. 22 & 23 Car. 2. c. 20.

Three Justices (Quor. one) may settle Gaoler's Fees for Commitment, Discharge, and Chamber-Rent within their several Precincts, except London, Middlesex, and Surrey, which are to be settled by the two Chief Justices

Justices to settle what Prisoners are to pay.

## Gaol and Gaoler.

and Chief Baron, or two of them, and the Justices of the Peace in their several Jurisdictions. And the several Rates and Fees are to be signed by the Chief Justices and Chief Baron, or two of them, and the Justices of Peace for *London and Middlesex*, and *Surrey*, and by the Judges in their Circuits, and the Justices in their Precincts in the other Counties; to be register'd by the Clerk of the Peace, and hung up in a Table in every Prison. *Ibid.*

Officer not to carry a Prisoner into Tavern, &c. without his Consent; and Prisoners to have their Victuals whence they please.

No Officer shall carry any Prisoner to any Tavern, &c. without Consent of the Party, so as to charge such Prisoner with any Sum of Money for Wine, Beer, or Victuals, but what the said Person shall call for on his own Accord.

Prisoners shall be permitted to send for their necessary Food whence they please, and use such Bedding, Linen, and other Things as they think fit, without purloining, detaining, or paying for the same. *Ibid.*

Prisoners for Debt and Felons shall not be lodged together in one Room. Any Sheriff, Gaoler, or Keeper of Prisons offending herein shall lose his Place, and treble Damages to the Party grieved, to be recovered by Virtue of that Act. *Ibid.*

Gaolers Calendars ought to declare who are bail'd, as well as those in Prison. *Blac. 152.*

### An Indictment against a Person for breaking Gaol.

**J**URORS, &c. do present, That C. D. late of — in the County aforesaid, on (such a Day and Year) at L. in the said County, was arrested and imprisoned in the Gaol of our said Sovereign Lord the King, at — in the County aforesaid, for divers Felonies by him committed on the Day and Year, and at the Place aforesaid, with Force and Arms, &c. and that he the said C. D. broke the Gaol of our said Sovereign Lord the King at L. aforesaid, in the said County, and then and there feloniously permitted E. M. and K. L. then being Prisoners in the said Gaol, to go at Large, against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

A Gaoler shall take but one Fee of a Prisoner indicted for two Felonies.

Where Imprisonment is directed by any Statute, and no Time appointed for the Commitment of an Offender, it must be presently; and if no Time is expressly limited

for the Continuance in Custody, it is at the Discretion of the Court. 3 Rep.

So much of the Act 10 Ann. c. 14. for reviving and continuing several Acts as relate to the Building and Repairing County-Gaols, is made perpetual by 6 Geo. c. 19.

And by the same Statute, Justices of Peace within their several Jurisdictions, may commit Vagrants, and other Offenders, charged with small Offences, to the common Gaol, or House of Correction as they shall think fit.

Gauger. See Excise.

Good Behaviour. Vide Behaviour.

## Gun-powder.

NO Person is to keep more than six Hundred Pounds of Powder at a Time in a Store-house, &c. in the Cities of London and Westminster, or the Suburbs, within three Miles of the Tower, St. James's Palace, &c. or two Miles of any Magazine: Two Justices may summon Persons dealing in Gun-powder, and examine them on Oath; and if they have more than the Quantities above-mentioned, shall cause them to remove the same; refusing to remove it in Twenty-four Hours after Notice, incurs a Forfeiture of 20*s.* for every Hundred Weight; and refusing to be examined, they shall be committed to the County Gaol. 5 Geo. 1. c. 26.

Quantity allowed to be kept in one Place.

Two Justices may issue their Warrants for searching in the Day-time any Store-house for keeping of Gun-powder, and justify Breaking open Doors. Persons opposing the Search to forfeit 5*l.* to any Person who will sue for the same in six Months. Justices Power of Searching.

Justices of the Peace in Essex, Kent and Surrey, at their General Quarter-Sessions, may appoint proper Plats of Ground, not exceeding two Acres in one Place, for erecting Ware-houses for keeping Gun-powder, agreeing with the Owners of the Ground, &c. Places for Ware-houses.

No more than twenty Hundred Weight of Gun-powder is to be carried at a Time through London or Westminster, &c. and all Gun-powder shall be carried in cover'd Carriages, and the Barrels close jointed and hoop'd, and be put into Bags of Leather or Canvas. Gun-powder, carried by Man or Horse, shall be put into such Cases, on Pain of Forfeiture; the Conviction to be before two Justices. How Gun-powder is to be carried through London, &c.



How much  
Gun-powder  
may be kept  
in one Place.

Justices. But this does not affect any of his Majesty's Magazines, &c. Stat. 5 Geo. 1. c. 26.

By Stat. 11 Geo. 1. It is enacted, That it shall not be lawful to keep within *London* or *Westminster*, or the Suburbs thereof, or within three Miles of the Tower, or of the Palace of St. James's, or within two Miles of any Magazine belonging to the Crown, more than two hundred Pounds Weight of Gun-powder at one Time in any House or Houses, or other Place under the same Roof, or in any Yard, for more than twenty-four Hours, on Forfeiture of all the Gun-powder, and the Value, with full Costs to any Person, other than the Owner of the Gun-powder.

The Justices of Peace shall, on Demand by any Parish-Officer, or two or more Householders, assigning a reasonable Cause, issue Warrants *gratis*; and upon every such Search, the Searchers shall immediately seize, and within twelve Hours remove all such Gun-powder as shall be found within the said Limits, exceeding the Quantity allowed by this Act; and every Person obstructing such Seizure or Removal, shall forfeit 5 *l.* to the Informer.

None to use  
Iron Hammers  
where Gun-  
powder is.

If any Person shall use any Iron Hammer, shod or plated with Iron or Steel, in any such Place, while any Gun-powder is there, being convicted thereof, in one Month after the Offence, before any one or more Justices, he shall forfeit 20 *s.* to the Informer, to be levied by Distress and Sale of Goods, and for Want of Distress, shall be sent to the House of Correction, not exceeding one Month, nor less than fourteen Days.

Not to extend  
to the Maga-  
zines of the  
Crown.

Not to extend to any Store-house or Magazine belonging to the Crown, wherein Gun-powder, or other Stores shall be kept for the Use of the Publick, or to hinder the proving Gun-powder by his Majesty's Officers as is usual, or to the carrying of Gun-powder to or from such Magazines, or with Forces in their Marches.

If any Suit be commenced for any Thing done in Pursuance of this Act, the Defendant may plead the General Issue, &c. and recover treble Costs.

The Act 5 Geo. 1. c. 26. and all the Provisions therein not hereby alter'd shall be in full Force; and the said Act, and this Present, shall be deemed to be publick Acts, and be judicially taken Notice of as such in all Courts and Places.

## A Warrant to search for Gun-powder.

*Midd. J.* **W** Hereas Notice has been given to us A. B. and C. D. Esqrs; two of his Majesty's Justices of Peace for the County aforesaid, that J. S. of, &c. within your Parish, keeps a larger Quantity of Gun-powder in his Ware-house than is allowed by Law: These are therefore to require you to make diligent Search in the Store-house of the said J. S. in the Day-time, for such Gun-powder; and if you find in the said Store-house more than two Hundred Pounds Weight, that you do certify the same to us, in order to our proceeding therein as the Law directs. Given, &c.

**Guns.** See Game.

## Hares and Hawking. See Game.

Vide Raym. 378. 1 Ven. 39, 419. Sid. 247. 1 Saund. 263. 4 Mod. 49, 50.

## Hawkers and Pedlars.

**B**Y Stat. 8 & 9 W. 3. c. 25. every Hawker, Pedlar, or Petty Chapman or other trading Person, going from Town to Town, or other Mens Houses.

Continued by 9 & 10 W. 3. c. 27. continued by 12 & 13 W. 3. c. 11. Whar Hawkers, &c. are to pay.

|                                                                       | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|-----------------------------------------------------------------------|-----------|-----------|-----------|
| If on Foot must pay _____                                             | 04        | 00        | 00        |
| If with Horse, Ass or Mule, for every one of them Four Pounds a-piece | 04        | 00        | 00        |

Every Hawker, &c. must take a License; and if he travels without, or contrary to his License, he forfeits for every Offence, to the Informer and Poor of the Parish where discover'd, 12 *l.*

And if he refuse to shew his License; being demanded by any Officer of the Peace, he forfeits to the Poor, where the Demand shall be made, 5 *l.* and for Non-payment of the same must suffer as a Vagrant, and be sent to the House of Correction.

Refusing to shew his License.

Forging a  
License.

Whosoever shall forge, or travel with any forged License, forfeits 50*l.* one Moiety to the King, the other to the Prosecutor, to be recovered in the Courts of Westminster, and be subject to the Penalties for Forgery.

Persons sued.

Persons sued may plead the General Issue, and give the Act in Evidence, and, if Verdict for them, shall have treble Costs.

Officers refusing to do their Duty, &c.

Constables, or other Officers, neglecting or refusing to assist in the Execution of this Act, convicted on Oath before a Justice of the Peace, forfeit for every Offence to the Poor and Prosecutor, to be levied by Distress &c. 2*l.*

Any Person may seize and detain Hawker, &c.

Any Person may seize and detain such Hawker till he produce a License, or if trading without a License, till Notice be given to a Parish Officer, who is to carry him before a Justice of Peace, who, upon Confession of the Party, or Oath of one Witness, that the Offender has traded without a License produced, shall by Warrant levy 12*l.*

To whom the Act does not extend.

Not to extend to

Acts of Parliament.  
Almanacks licensed.  
Fairs, selling Goods therein.  
Fish.  
Fruit.  
Gazettes.  
Markets, selling Goods therein.  
Prayers, Forms thereof.  
Papers licensed.  
Proclamations.  
Victuals.

Sellers of

Makers or  
their Agents,  
Apprentices,  
Children,  
Servants.

Of any Goods or Wares in this Kingdom  
and selling Goods of their own Ma-  
king.

Artificers.

Coopers,  
Glaziers,  
Harnes-  
makers,  
Plumbers,  
Tinkers,

or

Other Persons, trading in  
mending Kettles, Tubes,  
Household Goods, or Har-  
ness, going about and car-  
rying with them proper  
Materials for mending the  
same.



All Persons may sell any Sorts of Goods in any Publick Market or Fair, as they lawfully might have done before the Making the said Act. And by 9 & 10 W. 3. c. 27. the Act is not to extend to license any Hawker, &c. to sell any Wares, &c. in any City, Borough, Town Corporate, or Market-Town, otherwise than might have been done before the Making the said Act.

By 3 & 4 Ann. c. 4. the said Acts are continued from 1710. for 96 Years; and every Person trading as a Hawker, &c. is to produce his License on Demand, or else he shall be liable to the same Penalties, as if he had traded without a License. And if any Person lend a License to Hire, the Lender or the Trader shall forfeit 40*l.* one Moiety to the King, and the other to the Informer, to be recovered by Action of Debt, Information, &c. and the Lender shall forfeit the License. But Traders in the Woollen and Linen Manufactures, selling their Goods at Markets or Fairs, are not to be deemed Hawkers. And Makers and Sellers of *English* Bone-Lace, going from House to House, &c. are not adjudged Hawkers, by 4 Geo. 1. c. 6.

Persons may sell Goods in Fairs and Markets as before.

No Person to lend or hire out his License.

None to hawk Brandy, &c.

By an Act made 2 Geo. 2. no Person shall hawk, or sell any Brandy, or other Spirits about the Streets in a Wheelbarrow, or upon the Water in any Boat or Vessel, or on any Bulk, Shed or Stall, or on, or in any other Place, other than in his Dwelling-house, on Forfeiture of 10*l.* and any Justice of the Peace near the Place where the Offence is committed, on Confession of the Offender, or on the Oath of one or more Witnesses, shall hear and determine such Offence in a summary Way, on Complaint within one Calendar Month after the Offence committed; and on Conviction, the Forfeiture shall be levied under their Hands and Seals; one Moiety to the Informer, and the other to the Poor, &c. and if the Person convicted shall refuse to pay, or shall not have Goods, on which the same may be levied, the Justice shall commit him to the House of Correction, to be kept to hard Labour for any Time, not exceeding three Months, nor less than one Month.

If any Person be sued for any Thing in Pursuance of this Act, he may plead the General Issue, and give the Act in Evidence; and if the Plaintiff be Nonsuited, &c. the Defendant shall have treble Costs.

This Act to continue for five Years, and to the End of the then next Session of Parliament.

Not to extend to Arrack, Rum, Citron-water, or Uisquebaugh, usually imported from the *East-Indies*, or the *British* Plantations, or from *Ireland*, nor to *Scotland*.

A Con-

## A Conviction of a Hawker refusing to produce his License.

9 & 10 W. 3.  
c. 27.

**M**emorandum, *That on, &c. at, &c. A. B. came before me, and as well for himself as the Poor of the Parish, &c. exhibited an Information on Oath against E. F. of, &c. that he the said E. F. not being the real Worker or Maker of any Goods, Wares or Merchandises, within the Kingdom of England, &c. and not being the Apprentice or Servant of any real Worker or Maker of Goods, Wares or Merchandises on, &c. in the Parish of, &c. was found wandering abroad from House to House, and trading as a Hawker, Pedlar, and Petty Chapman, carrying about with him divers Parcels of Goods, viz. &c. and that in such wandering, he the said E. F. did expose to Sale several Goods, not being in any Market or Fair, without producing any License for the same, contrary to the Statute in that Case made. And the said E. F. after having been first summoned in his own proper Person, appearing before me one of his Majesty's Justices of, &c. (and the Information being read to him and heard) he the said E. F. did confess before me, that he did on, &c. sell, &c. as in the said Information mentioned. Whereupon it doth manifestly appear, that he the said E. F. is Guilty of the Offence laid to his Charge in the said Information; and I do hereby declare him convicted thereof, &c. In Witness, &c.*

## A Warrant to levy 12*l.* for Hawking without a License.

8 & 9 W. 3.  
c. 27.

Essex, *ff.* **W**hereas Information hath been given unto me, one of his Majesty's Justices of the Peace for the said County, upon the Oath of C. D. of, &c. that A. P. of, &c. Labourer, did on the Fourth of May Instant, trade and hawk without License in, &c. and carried about and exposed to Sale three Pieces of Silks, called, &c. he not being the Maker of such Silks, nor Apprentice, Agent, Child, or Servant to the real Worker or Maker of such Silks he so carried abroad and exposed to Sale as aforesaid, which the said A. P. hath confessed before me upon his Examination, contrary to a late Act of Parliament for licensing Hawkers, &c. for which said Offence he the said A. P. hath forfeited the Sum of 12*l.* the one Moiety thereof

thereof to the Informer, and the other Moiety to the Poor of the Parish of, &c. where the said Offence was committed: These are therefore to authorise and require you, or any of you, upon Sight hereof, to demand of the said A. P. the said Sum of 12 l. and in Case he refuse to pay the same, that then you levy the said Sum by Distress and Sale of the Goods, Wares and Merchandises of the said A. P. (rendering to him the Overplus, if any be, reasonable Charges for taking the said Distress being first deducted) to be employed to the Use above-mentioned, and in Case of his Inability for Payment thereof, that then you forthwith bring the said A. P. before me, or any other of his Majesty's Justices of the Peace of the County aforesaid, to be farther dealt with as the Laws in that Case provided do direct. And hereof fail not. Given, &c.

Hays. See Game.

## Hay, and Hay-Market.

Persons offering Hay to be sold within the Weekly Bills of Mortality, between the Last of *August* and the First of *June*, not weighing 56 Pounds a Truss at least, and between the First of *June* and the Last of *August*, not weighing 60 Pounds a Truss new, and old 56 Pounds, forfeit 1 s. 6 d. a Truss by Distress and Sale; if not paid in six Days, committed till Payment; if on Conviction, to Poor and Informer; if on view, to Poor, and Repair of Highways. Stat. 2 W. & M. c. 8.

What Weight a Truss of Hay must be of.

No Persons shall suffer their Waggon, Carts, &c. to stand in any Place within the Weekly Bills of Mortality laden with Hay or Straw to be sold from *Michaelmas* to *Lady-Day* after Two a-Clock in the Afternoon, nor from *Lady-Day* to *Michaelmas*, after Three a-Clock.

No Carts to stand after Two a-Clock.

Owner of every Load or Parcel of Hay brought into Hay-Market, shall pay 3 d. and 1 d. for every Load of Straw to such Persons as Justices of *Middlesex* and *Westminster* shall appoint, towards the Amending the Street called the Hay-market, the same Hay, &c. not being sold, shall not pay twice; on Refusal, Distress by Warrant from one Justice on Oath of the Party demanding the same, Sale of, &c. in three Days. Posts or Stones to be set up by Justice for the Bounds of the Hay-market.

What every Cart is to pay for Hay and Straw.

Bounds of the Hay-market.

Toll-



Toll-takers  
ring a Bell.  
8 & 9 W. 3.  
c. 17.

Collector of  
Toll to Ac-  
count yearly  
to Justices.

Toll-taker twice every Market-day shall ring a Bell an Hour before, and at the Expiration of the Time when Carts are to leave the Market, Persons not departing with Carts after such Notice, shall forfeit 5 s. by 2 W. & M. cap. 8. which Forfeitures shall be demanded the same Day the Offence is committed; Complaint to one Justice (*Quorum*) before next Market-day Offender to have Notice of it next Time he comes to Market, or else not liable to pay. Collectors of said Toll shall yearly at every *Easter* Sessions give to the Justices of Peace of the said County and City a particular Account upon Oath of their Receipts and Disbursements, and the Overplus to go to the County of *Middlesex*.

Heath. See Game.

## Hedge-breaking. See Wood.

How Break-  
ers of Hedges,  
&c. are pun-  
ished.

**B**reakers and Cutters of Fences, Hedges, Pales, or Rails, Cutters and Carriers away of Corn growing.

Pullers up of Fruit-trees with Intent to carry them away.

Cutters and Spoilers of Poles, Trees or Wood.

Being convicted before one Justice, either upon Confession or Oath of one Witness, must pay what Damages the Justice shall think fit; and if not able, may be whipped by the Constable, who neglecting may be committed without Bail 'till it be done.

The second Offence is Whipping.

But the Justice may not proceed in his own Case without Assistance of another Justice. Stat. 43 *Eliz.* c. 7.

Stealers of  
Gates, &c. to  
be apprehend-  
ed.

And by Stat. 15 *Car.* 2. c. 2. A Constable or any other may apprehend Persons suspected of stealing Broom, Furze, Gates, Hedge-wood, Pales, Poles, Rails, Stiles, Trees growing, Under-wood, Wood, and by Warrant from one Justice, may search their Houses and if they find any of those Things, they may carry the Person on whom found before a Justice of Peace and if he cannot give a good Account how he came by the same, or in a convenient Time produce the Person whom bought, or some Witness to prove the Sale on Oath, he shall make such Recompence as the Justice

How punished. shall appoint, and pay a Sum not exceeding 10 s.

the Use of the Poor where the Offence was committed ; and for Default thereof, he shall be sent to the House of Correction for any Time, not exceeding a Month, or be whipped ; the second Offence, to be committed to the House of Correction for a Month, and to be kept to hard Labour, and for the third Offence to be adjudged an incorrable Rogue.

If one be convicted of buying stolen Wood, knowing it to be stolen, one Justice may order such Buyer to pay treble the Value to him, from whom stolen, and on Non-payment, may levy the same by Distress ; and in Default thereof commit the Offender for one Month. Justice may order Buyer of stolen Wood to pay treble Damages.

The Conviction must be within six Weeks after the Offence committed, and none shall be punished by this Act, if he hath been punished for the same Offence by any former Law. Stat. 15 Car. 2. c. 2.

For malicious breaking down, cutting up, plucking up, throwing down, barking, or otherwise destroying, defacing, or spoiling any Timber-Trees, Fruit-trees, or other Trees, the Offenders are to be sent to the House of Correction for three Months, and to be whipped once a Month in the Market-Town, where the House of Correction stands, or the next Town, by Order of two Justices, or the Sessions. And the Offender is not to be discharged 'till he hath found Sureties for his Good Behaviour for two Years ; and if any Person maliciously set Fire to any Wood, Underwood, or Coppice, it is Felony. Stat. 1 Geo. 1. c. 48. How malicious Destroyers of Trees are to be punished.

And by 6 Geo. 1. c. 16. where any Persons by Day or Night shall cut, throw down, bark, burn, spoil, or carry away any Trees, Woods, Wood-springs, Thorns, or Quicksets without the Owner's Consent, or break open any Hedges, Gates, Posts, &c. of Wood-Grounds, and the Offenders cannot be known, the Owners shall have such Remedy and Satisfaction from the Inhabitants of the Place, as for Dikes and Hedges overthrown by Persons in the Night, by Stat. 13 Ed. 1. c. 46. by which the Parish shall be distrained to make good the Damage, unless the Offender be convicted within six Months after the Offence committed. Parish to answer the Damages, unless Offenders be convicted in six Months.

And where any Persons destroy Wood, Timber, &c. the Justice of Peace of the Place, or Justices in Sessions on Complaint by any Inhabitant, or the Owner of the Wood, are to cause the Offender to be apprehended, to adjudge the Offence, and inflict the Punishment in the Act, 1 Geo. 1. c. 48.

The Conviction of Hedge-breakers, &c. must be by the Confession of the Party, or the Oath of one Witness before one Justice. Persons suspected not giving a good Account how they come by Wood, &c. in their Possession, is a Conviction. Whereupon the Justice may order Recompence to the Party injured, and 10 s. to the Poor, and on Default of Payment, the Justice may at his Discretion either send the Offender to the House of Correction, or cause him to be whipped. 15 Car. 2. c. 2.

Cro. Car.  
289, 439.  
Sid. 107, 312.  
Style 215.  
1 Leon. 108.  
Raym. 487.

In Convictions on the Stat. 43 Eliz. c. 7. for cutting down Trees in the Night, the Number as well as the Nature of the Trees ought to be expressed; for in this Respect, 'tis like an Action of Trespass, where the Number and Nature of the Trees ought to be the Measure of the Damages; so that if an Action of Trespass should be afterwards brought for the Trees, the Conviction might be pleaded in Bar.

The Defendant was convicted by two Justices upon the Stat. 1 G. 1. c. 48. for destroying Fruit-trees; and it was moved to quash this Conviction, because it did not specify the Punishment inflicted by that Statute, which is to be sent to the House of Correction for three Months, &c. and the better Opinion was, that this being a Special Judgment of the two Justices, they should have specified the Punishment inflicted by the Statute, because it might be different from the Punishment appointed by them; however, there being no Forfeiture in this Case, it was held, that *Ideo consideratum est quod convictus est* was sufficient without setting forth the Punishment. Trin. 9 G. 1. B. R.

### Warrant to apprehend a Person for destroying Timber-Trees.

6 G. 1. c. 16.

Berks, ff. **W** Hereas Complaint hath been made before me by D. E. of the Parish of S. in this County, that on the ninth of June last, C. D. of the said Parish, did maliciously cut and spoil one Timber-Tree, belonging to him the said D. E. in a Ground called Long-Close, contrary to the Statutes for Preservation of Timber and Wood: These are therefore in his Majesty's Name, to require and authorize you to apprehend the said C. D. and that you bring him before me, or some other of his Majesty's Justices of the Peace for this County, in order to an Adjudication of the Offence, and Awarding the Punishment which the Statute directs. Given under my Hand and Seal, &c.



## The Conviction or *Mittimus* for maliciously destroying Trees.

Essex, ss. **W** Hereas upon the Complaint of A. B. of, &c. 1 G. 1. c. 48.  
*we whose Names are hereunto subscribed, Two Justices.*

*two of his Majesty's Justices of the Peace for the said County, did cause F. K. of, &c. to be apprehended for a Trespass, and being now brought before us, We upon his Examination, and other due Proof do adjudge that the said F. K. did on the 5th Day of August last past at M. in the County aforesaid, maliciously \* cut down Fruit-trees of the said A. B. contrary to the Statute in that Case made and provided, of which Offence he is now, and doth stand convicted: We therefore require you to convey the aforesaid F. K. to the House of Correction, at M. in the said County; and to deliver him to the Master thereof; and we hereby require you the said Master to receive the said F. K. into your Custody, and him safely to keep in the House of Correction † for three Months next ensuing, and until he shall be legally discharged from thence: And we do likewise hereby order that the said F. K. shall be publicly whipped by you the said Master once in every Month, during the said three Months in the \* Town of M. in the said County on a Market-day there, between the Hours of eleven and two a-Clock of the same Day, and for your so doing, this shall be your Warrant. Given, &c.*

\* Or cut up, pluck up, bark, or spoil Timber-Trees, Fruit-Trees, or any other Trees as the Case is.

† Must give Sureties for his Behaviour for two Years.

\* If the Offence was done in a Borough, or in a Corporation, then he must be whipped there.

## An Order for the Buyer of stolen Wood to pay treble Damages, according to the Act of Parliament.

**W** Hereas it hath been duly proved before me, That S. P. 15 Car. 2. c. 21  
*of, &c. hath lately bought several small Quantities of Coppice-Wood of R. C. of, &c. who is a Person reputed to be of late very much addicted to Stealing of Wood, and that the said S. P. knew the said Coppice-Wood was stolen at the same Time he bought it of the said R. C. and that the same was the Wood of T. A. of, &c. and was worth the Sum of 5s. at the Time the said S. P. bought the same: I do therefore order and direct, and hereby charge and require you the said S. P. to pay unto the said T. A. the Sum of 15s. being treble the Value of the said Wood, which you have forfeited by the Offence aforesaid, according to the Act of Parliament in that Case made. Given, &c.*

Hemp

## Hemp and Flax.

Foreigners using the Trade of dressing Hemp or Flax 3 Years, have all the Privileges of natural-born Subjects.

**B**Y Stat. 15 *Car. 2. c. 15.* Foreigners, using the Trades of breaking, hickling, or dressing Hemp or Flax, and of making and whitening Thread, and spinning, weaving, making whitening and bleaching Cloth made of Hemp or Flax only, and making Twine or Nets for Fishery or Stores, Cordage, or making Tapestry Hangings, and taking the Oaths of Allegiance and Supremacy before two Justices, shall enjoy all Privileges whatsoever as the natural-born Subjects of this Kingdom, after having exercised the said Trades three Years; nor shall they be liable to other Impositions than natural-born Subjects, unless they trade as Merchants to and from Foreign Parts, in which Case they shall pay *Aliens* Customs for five Years next ensuing, and no longer.

Hides and Skins. See Leather.

## Highways. See Scabengers.

By whom private Ways are to be repaired. Clergy liable to repair Highways.

**T**H O' private Ways are to be repaired by the Village, and sometimes by a particular Person; yet publick Ways are to be repaired by the Parith, unless some others in particular are thereto obliged by Custom or Prescription, and even Clergymen who are liable to all Charges imposed by Acts of Parliament, unless particularly excepted, are certainly liable to repair Highways; so also the Lands of the Church in the Hands of the Parson are liable to be charged for the Repairs of the Highways; and 'twas so adjudged by *Hale* and the whole Court *Trin. 27 Car. 2. B. R. 2 Lev. 139. 3 Keb. 476. Webster. Batchelor, S. C.* is reported in *1 Vent. 273.*

All the Statutes relating to the Highways.

The Statutes, which relate to Highways in general, are 2 & 3 *P. & M. c. 8. 5 Eliz. c. 13. 18 Eliz. c. 10. 14 & 22 Car. 2. c. 2. & c. 12. 2 W. & M. c. 8. 3 & 4 W. & M. c. 12. 7 & 8 W. 3. c. 29. 8 & 9 W. 3. c. 16. 1 Ann. c. 18. 6 Ann. c. 29. 9 Ann. c. 18. 1 Geo. 1. c. 11. 1 Geo. 1. c. 52. 5 Geo. 1. c. 12.*

2 & 3 Philip & Mary c. 8.

I find no Mention made in our Law-Books of Surveyors of the Highways before the 2 & 3 of King Philip and Queen Mary, c. 8. when a Statute was made, wherein it

was enacted, that the Constables and Church-wardens, &c. of every Parish should yearly call together a Number of the Parishioners, and then elect and choose two within the Parish, to be Surveyors of the Highways for the Year following, who should forthwith take that Office upon them under the Penalty of a Fine.

By Stat. 5 *El. c. 13.* the Surveyors have Power to turn Water-Courses hurtful to the Highway, into any Man's Ditch, and take the Rubbish ready dug; and for Default of Gravel, to dig in any Grounds, except Houses, Orchards, Gardens, and Meadows, filling up the Pits, &c. and of appointing six Days in the Year for the Amendment of the Highways.

5 *Eliz. c. 13.*  
Surveyors have  
Power to turn  
Water-Courses.

By 18 *El. c. 10.* a Cottager, if he be in the Subsidy 5 *l.* in Goods, or 40 *s.* in Land, shall find two able Men. Every Person having a Plough-Land in several Parishes, shall be chargeable with a Team or Draught in that Parish where he dwells: Howbeit having entire Plough-lands in several Parishes, he shall for every one of them find a Team in the several Parishes where they lie, altho' he be not Inhabitant there.

18 *Eliz. c. 10.*  
Every Person  
having a  
Plough-Land,  
chargeable  
with a Team.

By 22 *Car. 2. c. 12.* Trustees of Lands given for Maintenance of Highways, &c. shall let them to Farm at the most improved yearly Rent without Fine. The Justices of Peace in their open Sessions may order the Improvement and Employment thereof, (other than of Lands given to Colleges and Halls in either University having Visitors of their own) according to the Will of the Donor; and they find that the Persons entrusted have been faulty; and upon such Orders, Appeal to Chancery lies, as to a decree of a charitable Use.

22 *Car. 2. c. 12.*  
Trustees must  
let Lands most  
for the Benefit  
of the High-  
ways.

The Occupiers, and where there are none, the owners of Lands, Houses, &c. adjoining to the Highways, Streets, &c. in the Suburbs and Liberties of London, Borough of Southwark, and City, and Liberty of Westminster, which are, or shall be paved shall be liable to the Scavenger's Rates, as by 14 *Car. 2. c. 2.* is appointed; and where any Ground lies so as there may be a Dispute who ought to repair the same, the Justices of Peace in their Quarter-Sessions shall determine it. *Ibidem.*

If any fail to make their Day's Labour or neglect to mend their Carriages, &c. the Surveyors shall complain to the next Justices of Peace, who upon Oath thereof by one Witness, may levy by Distress and Sale of Goods, for every Day-Labourer without reasonable Cause, 1 *s. 6 d.* for every Man and Horse 3 *s.* and for every Cart with Men 10 *s.* the Penalties to be employed for repairing Highways. *Ibidem.*

If any neglect  
their Labour,  
or to mend their  
Teams.



The King (by the Common Law) may award his Commission for the amending of the Highways and Bridges throughout his Realm, so as the People may have safe Passages thereby. *Dalt.* 101.

We shall treat next, 1st of the Duty of Surveyors; 2dly, of the Justices of Peace relating to Highways.

### Surveyors of the Highways how chosen, their Office and Duty, &c.

3 & 4 W. & M. c. 12. How Surveyors are chosen.

**B**UT the abovesaid Statutes being in many Particulars defective, the Statute of 3 & 4 W. & M. c. 12. was made, whereby it was enacted, that every Year on the 26th Day of *December*, unless that happen on a *Sunday*, and then the Day following, the Parishioners must meet, and make a List of a competent Number of Persons thus qualified.

1. They must have an Estate of 10*l.* *per Annum*, either in their own Right, or in the Right of their Wives.

2. Or they must be worth 100*l.* in personal Estate.

3. Or Rent 30*l.* *per Annum*.

If there are not any Persons in the Parish thus qualified, then a List must be made of the most sufficient Persons.

The List must be returned to two or more Justices of the Peace near the Division in which the Parish lieth at a special Sessions to be held on the third Day of *January* or within 15 Days after.

If the Constables neglect to return such List, each of them forfeits 20*s.*

Out of this List so returned, the Justices at that Sessions do appoint one or more to be Surveyors, &c. by an Order under their Hands and Seals.

Within six Days, and Notice.

Surveyor must take on him the Office.

Within six Days after the Person thus appointed has Notice thereof given him by the Constable, by leaving Copy of the Justice's Order at the House of the Party, he must take upon him the Office.

And if he refuse after being so nominated and appointed, and served with the Order, then he forfeits 5*l.* to be levied by Warrant from the Justices of the same Division; or in Default thereof, from the neighbouring Justices upon Oath made, &c. and one Moiety of the Forfeiture is to go to the Informer, and the other to repair the Highways; and the Justices may again appoint

# Highways.

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one or more Surveyors, who upon Notice must take upon him or them the Office, &c. under the same Penalty.

Within 14 Days after the Acceptance of his Office, he must, His Duty when and so from Time to Time every 4 Months, view the Roads chosen. and Bridges, &c.

He must present upon Oath to the special Sessions such Ways which are not in Repair, or he forfeits 5*l.* unless the special Sessions shall allow his Excuse.

He must every four Months from Time to Time give publick Notice in the Parish Church the next Sunday after Sermon ended, of what Default he finds; and if not amended within thirty Days afterwards by those who ought to repair, &c. Every four Months must give publick Notice. then the Surveyor must within other thirty Days next following amend the same.

He must give an Account upon Oath at a special Sessions, of all Money that comes to his Hands, and how disposed, &c. He must account upon Oath. and if any remains, he must deliver it to the next Surveyor, or forfeits double the Value of what the Justices shall judge in his Hands, to be levied by Warrant of two Justices, one Part to the Informer, &c.

For any neglect of his Duty, he is to forfeit 40*s.* one Moiety to the Informer, the other to amend the Highways, to be levied by a Warrant from two Justices. He forfeits 40*s.* for every Neglect.

But if he neglect to give an Account of the State and Condition of the Highways, more especially of such Faults and Defects as want to be amended, and of those who are bound to find Labourers and Teams, he forfeits 5*l.* one Moiety to the Informer, the other to mend the Highways, unless the special Sessions allow a reasonable Excuse. If he does not give an Account of what wants to be amended, forfeits 5*l.*

The first seasonable Time that comes, must be taken by the Surveyors to repair the Ways, so as it may be done before Harvest, if possible, and they must repair those Ways first which the Justices in their special Sessions shall order to be repaired, if any such Order there be. These Ways must be first mended which Justices order.

He is to appoint six Days for providing Materials to amend the Ways, giving Notice of the several Days by him appointed, at which Time all Persons liable must work, and the Ways must be amended before the Feast of St. Luke. He must appoint the six Days to work on the Highways.

Every Person keeping a Team of Horses must send out a Cart, and two able Men, and if he keep Oxen then he must send them out, and a Wain and two Men to work eight Hours every Day so appointed by the Surveyor, on Pain of 10*s.* for every Default of a Cart with two Men, and 3*s.* for every Man and Horse to be employed in mending the Highways, and as many Draughts as he keeps, so many he must send out. What Cart, &c. must be sent.

If the Surveyors do not think all the Carriages in the Parish necessary, then the Person whose Carriage is spared, must send two able Men, or forfeits 10*s.* for every Man not sent. If Cart, &c. are spared, must send out two Men.

Every one, be he Labourer and Cottager, or Householder able to labour, and being no hired Servant by the Year, shall by themselves, or one sufficient Labourer for every of them work each of the six Days, or forfeits by Stat. 22 Car. 2. c. 12. 1*s.* Every one obliged to work or send.

Formerly 100 Acres, but now 80 Acres are deemed, but by Stat. 7 & 8 W. 3. 50*l.* per Ann. is a Plough-land as to Highways. Raym. 186.

Where Carts  
are not used  
Horses must be  
sent.

How the Pe-  
nalties are le-  
vied.

In such Countries where Carts are not used, the Inhabitants must send Horses according to the Custom of the Place, with able Persons, &c. under the like Penalty.

All Land in the Parson's Hands, except only his Glebe, is chargeable.

For levying the Penalties, the Surveyor may complain to the next Justices, &c. who on Oath made of the Default, may send their Warrant to levy the Forfeitures by Distress and Sale of Goods, viz.

On a Man neglecting.

For every Man and Horse, &c.

For every Cart with two Men.

| <i>l.</i> | <i>s.</i> | <i>d.</i> |
|-----------|-----------|-----------|
| 00        | 01        | 06        |
| 00        | 03        | 00        |
| 00        | 10        | 00        |

No Bushes, &c.  
must overhang  
any Highway  
not twenty  
Foot broad.

For every Day they shall neglect; and the Penalties when levied, must be employed towards the Amending the Ways.

If Bushes, Boughs, &c. grow, stand, or overhang any Highway not 20 Foot broad, the Owner of the Soil within ten Days after Notice given by the Surveyor, is to cut them down, or be liable to the Penalty of 5 s. to be levied by Distress, on Warrant of two Justices, on Oath of one Witness; one Moiety to go to the Informer, the other towards Repairing of the Ways.  
3 & 4 W. & M. c. 12.

By an Act 7 Geo. 2. reciting, that the making the Common Highways as commodious as may be, tends greatly to the Ease and Safety of his Majesty's Subjects, and to the Advantage of Trade and Commerce, and that in many Places the Common Highways are greatly damaged by the Hedges adjoining thereunto, being of such Height as to hinder thereby the Advantages which would otherwise accrue to the said Highways by the Sun and Winds, and whereas some Doubts have arisen whether in such Cases the Laws in Being have provided a sufficient Remedy, it is enacted,

Hedges depri-  
ving the High-  
ways of the Be-  
nefit of the Sun  
and Winds are  
presentable,  
and the Surveyor  
may cut them within three Feet of the Bank, on the Owner's Refusal.

That after the 24 June 1734. Surveyors may make a Presentment of Hedges annoying the Roads, to the Justices who are to issue their Precept to the Parish Surveyor, to give Notice to the Owner. (Such Notice to be given between *ult' Sept'* and *1 Feb'*)

and the Surveyor may cut them within three Feet of the Bank, on the Owner's Refusal.

The Surveyor may cut such Hedges, within three Feet of the Bank, on the Owner's Refusal after 30 Days Notice. And the Charge to be repaid by the Owner, or levied by Distress.

This Act not to alter the Laws with Regard to Timber Trees growing in Hedges, nor any Law for amending the Highways.

Every Cartway  
eight Foot  
broad, &c.

How and  
where Survey-  
ors may dig  
for Rubbish,  
&c.

A Surveyor may make every Cart-way leading to a Market Town eight Foot broad at least, and Causeways for Houses must be three Foot broad. *Ibidem.*

The Surveyors, &c. may take Stones and Rubbish already dug out of any Quarry without Leave of the Owners, and they may gather Stones in any Land without Trespass, and may dig in any Ground near the Highways, so it be not in a House, Garden, Orchard, or Meadow; and it must be but in one Row or Hole, not above twenty Foot in Length and Breadth, which must be filled up by Order of the Surveyors within one Month under Penalty of five Marks.



Those who are convicted by Oath of one Witness before one Justice of the Division, or upon his own View of pulling up, cutting or removing any Post, Block, Great Stone, Bank of Earth, or other Security of a Horse way, or Cause-way for Waggon, Carts, &c. forfeit for every Offence 20 s. to be levied by his Warrant by Distress and Sale, &c. one Moiety to the Surveyors to repair the Ways, the other to the Informer.

20 s. Forfeiture to remove any Post, Great Stone, &c.

In Parishes where the Surveyors are forced to buy Sand, Gravel, or other Materials with their own Money, in order to be re-imburfed, they must attend the Justices at a Special Sessions, and swear what Money they have expended, &c. and then two Justices at the Sessions may make a Rate upon every Inhabitant, Parson, Vicar, and other Occupier of Lands, Tithes, Woods, &c. in the Parish, which Rate being allowed by the said Justices in their special Sessions, may be levied on Persons refusing to pay by Distress, &c. 3 & 4 W. & M. c. 12.

How Surveyors are to be re imburfed when out of Pocket, &c.

If those, who have Lands adjoining to the Highway, in which Ditches ought to be scoured, neglect to scour them as often as there is Occasion, and lay Trunks or Bridges where there are Cart-ways into any Ground, that the Water may have a free Passage, for ten Days after Notice from the Surveyors, they forfeit 5 s. to be levied by Warrant of two Justices of the same Division, &c. upon Oath made, &c. one Moiety to the Informer, the other to amend the Ways. 3 & 4 W. & M. c. 12.

What those neglecting to scour Ditches, forfeit.

The Person who ought, and who neglects or delays for thirty Days after Notice by the Surveyor to scour and keep open his Ditches near the Highways, on Oath thereof, before the Justices at their special Sessions, forfeits 2 s. 6 d. for every eight Yards of Ditching not scoured and kept open, to be levied by Warrant under the Hands and Seals of the Justices in special Sessions by Distress and Sale, &c.

What they forfeit who leave Mud, &c. in Highways.

If in scouring the Ditches, they lay the Soil in the Highways, and suffer it to lie there eight Days after Notice, they forfeit, not exceeding 5 l. nor under twenty Shillings, to be levied, and employed as aforesaid. 1 Geo. 1. c. 48.

Surveyors have Power to turn any Spring or Water-course out of the Highways into those Ditches, and where the Ditches already made, are not sufficient to carry away the Water, they may make new Ditches and Drains, in and through the Lands adjoining, which they must keep scoured, and to that Purpose may come with

Surveyors have Power to make Drains and Water courses.

Owners of  
Land adjoining,  
may take  
Dung left in  
the Highway  
to their own  
Use.

Workmen upon the said Lands without being Trespassers.  
3 & 4 W. & M. c. 12.

All Persons laying any thing in a Highway not twenty Foot broad, forfeit 5 s. to be levied and employed as aforefaid; and if Timber, Stone, Hay, Straw, Stubble, &c. or other Matter for making Dung, or on any other Pretence, be laid in any Highway, those who possess Lands next adjoining, may remove and dispose thereof to their own Use, nor can they lay Logs or Timber in the Highways though there is sufficient Room for Travellers left. *Ibidem.*

All Matters concerning the Highways must be determined in the County where they lie, and not elsewhere, and no Prosecution but within six Months after the Offence committed. The Party grieved may appeal from any Act done by the Justices to the Quarter-Sessions, whose Order shall conclude all Parties, and no Presentment, Indictment, or Order shall be removed by *Certiorari*: Nor no Fine, Issue, Penalty or Forfeiture, for not amending Highways, shall be return'd into the Exchequer or other Court, but shall be levied into the Hands of the Surveyors, to be applied towards the Amendment of such Highways. And if any Action be commenced against those who put that Act in Execution, they may plead the general Issue, and give the Act itself, and the special Matter in Evidence; and if the Plaintiff be nonsuited, discontinue or a Verdict against him, the Defendant shall have double Costs.

3 & 4 W. & M. c. 12.

By Stat. 7 & 8 W. 3. c. 29. Surveyors compounding with, or receiving any Reward whatsoever of Offenders against that, or any other Act about Highways, by way of conniving at, or overlooking such Offences, forfeit 40 s.

Surveyors neglecting to fix a Stone or Post where Crossways meet.

If any Surveyor of the Highways neglect to erect or fix a Stone or Post, where two or more Crossways meet, with an Inscription thereon in large Letters, containing the Name of the next Market-Town, to which each of the adjoining Highways leads, according to the Precept to him directed by the Justices at their special Sessions for the Highways, he forfeits 10 s. to be levied by Warrant from one Justice, and employed towards erecting such Stone or Post, and the Overplus (if any) in repairing the Highways. Stat. 8 & 9 W. 3. c. 16.

## The Form of a Presentment of a Highway out of Repair made by a Surveyor.

**I** A. B. Surveyor of the Highways of and within the Parish of, &c. in the County of, &c. do hereby present that the Highway leading from, &c. to, &c. in the said Parish, is very much out of Repair, and dangerous to all Travellers who pass that Road, and that the Inhabitants of the said Parish of, &c. ought of Right to repair and amend the same.

I do also present upon Oath, that C. D. of the Parish of, &c. has lately laid several great Logs and other Timber in the said Highway, to the great Annoyance thereof, &c.

## The Power and Duty of Justices of Peace about Highways.

**B**Y Stat. 1 Geo. 1. c. 48. The Justices of the Division are to hold a Special Sessions in the Division, &c. every Year on the Third of January, or within fifteen Days after, of which they are to give Notice ten Days before they hold the same, to every Constable within the Division.

## The Justices Precept to the Constables to bring in a List of Persons fit to serve as Surveyors.

**T**HESE are to give you Notice, that on Monday the Third of January next, at the House of, &c. there will be a Special Sessions held for putting the Acts of Parliament in Execution relating to the Repairing the Highways, when and where you are hereby required personally to be and appear, and to bring with you a List of the Names of the Persons within your Parish fit to be Surveyors of the Highways for the Year ensuing, (viz.) such as have an Estate of 10l. per Ann. have a personal Estate to the Value of 100l. or as do rent 30l. a Year; and if you have not any such, a List of the Names of the most sufficient Persons in your said Parish, according to the Direction of the Acts of Parliament in that Case made, &c.



They are to nominate under their Hands and Seals, out of the Lists brought unto them, one or more Surveyors of every Parish within the Division for the Year ensuing, and upon the Refusal of the Party so nominated, and paying the Forfeiture of 5 *l.* by Warrant granted upon Oath of one credible Witness, then they are to nominate some other fit Person. 1 Geo. 1. c. 48.

### *An Appointment of a Surveyor of the Highways by Justices of Peace.*

At a Special Sessions held for the Highways on, &c.

**W**E, whose Names are hereto subscribed, being his Majesty's Justices of the Peace in the County of, &c. do hereby appoint A. B. of, &c. (one of the Persons mentioned in a List this Day, returned to us by, &c. Constable of, &c. Surveyor of the Highways, in the Parish of, &c. aforesaid, for and during the Space of one whole Year next ensuing the Date hereof, according to the Form of the Statute in that Case made and provided. Given, &c.

Two Justices may allow a Surveyor's Excuse.

If Surveyor after Notice doth amend the Roads, he is to be repaid.

Justices are to hold a Special Sessions every four Months.

May examine on Oath touching Money for Repairs.

Two of them may allow a reasonable Excuse of a Surveyor, not viewing or not presenting every four Months in what Condition the Ways are.

If Notice is given on Sunday after Sermon next, after any Default found, if within thirty Days after such Notice, the Party who ought to amend it, neglect so to do, and if the Surveyor within thirty Days afterwards doth amend it, and the Party neglecting refuseth to pay the Charges, then upon Oath made of Notice, &c. as aforesaid, the Surveyor shall be repaid such Charges as the Justice shall think fit, which is to be levied by his Warrant, &c.

They are to hold a Special Sessions once in four Months and summon the Surveyors thereunto, and to tell them what they are obliged to do; and at this Sessions the Justices may by Writing under their Hands and Seals order the Reparation of those great Roads which most want Repairing in that Hundred, where the Sessions is, which shall be first repaired, and in what Time and Manner.

They may likewise at this Sessions examine on Oath any Person who can give an Account of Money which ought to be applied for mending the Highways, and let

the Penalties, and dispose of the Forfeitures, one Moiety to the Surveyors of the Highways where the Offence was done, towards the Repairs thereof, and the other to the Informer.

If any Fine or Forfeiture imposed on any Parish, be levied upon any particular Inhabitant, then upon Complaint thereof to the Justices at the Special Sessions, they or two of them may by their Warrant cause a Rate, to be made to repay that Person or Persons, which Rate the Surveyors shall levy and pay within a Month after the Making thereof.

May make a Rate to repay any Person on whom Fine has been levied.

The Justices in their Quarter-Sessions not being satisfied that the Ways can be mended without the Help of the Act of 3 & 4 W. & M. c. 12. may cause Assessments to be made on every Person usually ratable to the Poor not exceeding 6*d.* in the Pound for the yearly Value of the Lands, nor of 6*d.* for every 20*l.* personal Estate: These Assessments must be made, and levied by such Persons, and in such Manner as the Justices in their Sessions shall direct and appoint, and the Money must be employed according to their Order for repairing of the Highways; and if not paid within ten Days after Demand, may be levied by Distress, notwithstanding the six Days Work hath been perform'd.

1 Geo. 1. c. 48. Notwithstanding the six Days Work hath been perform'd.

Any Person grieved by such Assessment, may Appeal to the Quarter-Sessions, whose Order shall be final.

The next Quarter-Sessions may make such Order as they shall think fit where any Person finds himself aggrieved by any thing done in Execution of the Statute 1 Geo. 1. c. 48. except for the Neglect of scouring Ditches, and carrying away the Soil taken out of the same, or who shall not carry away Stone, Timber, Straw, or Dung left in the Highways, or not remove any other Annoyances by Water courses, &c.

Next Quarter-Sessions may make what Order they think fit.

The Justices of *Middlesex* may at their Quarter-Sessions make Rates for paving *Kensington*, &c.

3 & 4 W. & M. c. 12.

The Justices neglecting or refusing to do what is required by the Act, forfeit 5*l.* one Moiety to the Prosecutor, to be recovered by Action of Debt in any of the King's Courts of Record, the other Moiety to be employed to amend the Highways where the Prosecutor liveth.

Justices neglecting their Duty, forfeit 5*l.*

The Quarter-Sessions may appoint Scavengers, and order the Repairing and Cleansing the Streets in any City or Market-Town, and may appoint Persons to make Assessments on every Owner and Occupier of Lands and Houses equally, not exceeding 6*d.* per Pound per Ann. to defray the Charges of such Scavengers, which

Quarter-Sessions may appoint Scavengers in Cities or Market-Towns.

which Assessment being allowed under the Hands and Seals of the Justices, &c. may be collected by such Persons as they appoint, and be levied by their Warrant on the Goods of those who shall not pay it within eight Days after Demand, and the Money thus raised, shall be employed and accounted for, according to the Direction of the Justices for repairing and cleansing the Streets. 1 Geo. 1. c. 52.

Justices Clerks  
to take no  
Fees of Sur-  
veyor.

The Servants or Clerks of the Justices at their Special Sessions, shall not take any thing of a Surveyor for his Oath, or his Account given in to them upon the Forfeiture of 10*l.* to be recovered in any Court of Record. *Ibid.*

Justice may  
present on his  
own Know-  
ledge, &c.

Any Justice may upon his own Knowledge pretend at the General Sessions any Offence concerning Highways, upon which the Court may assess a Fine, though the Offender is absent, which Fine shall not be taken off, unless the Party presented do certify the Amendment of the Ways, by 2 & 3 P. & M. c. 8. and 5 Eliz. c. 12. also he may present Defaults of Surveyors, and of all others relating to the Highways, &c.

### The Form of which Conviction is as followeth :

Essex, ss. **B**E it remembered that J. S. of such a Place one of the Justices assigned to keep the Peace of our said Sovereign Lord the King, and also to hear and determine divers Felonies and Trespases, and other Offences committed in the same County, at this General Sessions of the Peace of the said County, held at Chelmsford in the said County, on the Twenty-second Day of October, in the Eighth Year of the Reign, &c. before A. B. &c. (namely the rest) Justices of the Peace in and for the County aforesaid, by Virtue of the Statute of our late Sovereign Lady Elizabeth, late Queen of England, made in the Parliament held at Westminster, on the Twelfth Day of January in the Fifth Year of her Reign, and according to the Force and Effect of the said Statute, intituled, An Act for the Reviving a Statute made in the Second and Third Year of the Reign of King Philip and Queen Mary, cap. 1. for mending the Highways, upon his own Notice presented that a Common and Highway within the Parish of M. in the County aforesaid, which leads from the Parish of M. said to the Town of L. in the County aforesaid (being Market-Town) from a certain Place called, &c. in the said Parish of M. to a certain Place called, &c. in the same Parish of M. is not well and sufficiently repaired and amended.



According to the Form and Effect of the said Statute, but  
is in great Decay, so that the Subjects of our said So-  
vereign Lord the King were not able to pass or Journey  
through the Way aforesaid with Horses, Waggon, Carts  
and their other necessary Carriages, as they were before ac-  
customed and ought to do, without great Danger. In Wit-  
ness whereof he the said J. S. hath set his Hand and  
seal thereto, &c.

The Order thereon is as followeth:

Whereupon at the same General Sessions held on the  
Day and Year aforesaid, the said Justices of our  
said Sovereign Lord the King assigned to keep the Peace of  
the said Sovereign Lord the King in the County aforesaid,  
assessed and imposed a Fine of 20l. to be levied upon the  
Inhabitants of the said Parish of M. in whose Default  
the Way aforesaid is not sufficiently repaired, according to the  
Form of the Statute aforesaid, if the said Way is not suffi-  
ciently Repaired and Amended before the Feast of St. John  
the Baptist next following.

N.B. That upon such a Conviction the want of Re-  
pairs of the Highways cannot be traversed, but the De-  
fendant may plead that some other Person ought to re-  
pair, and traverse that he ought not.

Every Justice knowing that any Officer has received  
Fines for levying Forfeitures, &c. and neglected or not  
accounted, and paid it between the First Day of March  
and the Last Day of April to the Constables, &c. may  
resent it.

Two Justices (*Quorum unus*) may take the Account of  
the High Constable, and may compel him to pay the Fine  
owed to the Petty Constable, or commit him; but then  
he is to be allowed 8d. per Pound for collecting, and  
2d. for the Fee of the Estreat. And any one Justice  
may take the Account of a High Con-  
stable.

A Complaint may compel those who have been Consta-  
bles, to pay the Arrears of Money by them levied on  
the Highways.

One Justice of Peace upon his own View, or upon  
the Conviction by the Oath of one Witness, may commit  
any Person who resists any Person employed to put the Acts  
concerning Highways in Execution, or of rescuing Goods  
detained until he pay 40s. to the Surveyor, if he re-  
fuses to pay the same within seven Days after the Notice of  
such Conviction. 22 Car. 2. c. 12.

In whosesoever Ground or Side a Hedge shall be, to  
the Owner of that Land belongs the keeping the same  
Hedge.

Such a Con-  
viction not  
traversable.

Justice may  
present Offi-  
cers not ac-  
counting.

Two Justices  
(*Quorum u-*  
*nus*) may take  
the Account of  
a High Con-  
stable.

One Justice  
may commit  
Persons re-  
sisting.

Hedge and Ditch belong to the Owner of the Land, &c.

Five Justices at Quarter Sessions have Power of enlarging Highways.

Hedge, and also the Ditch adjoining and belonging to on the other Side in Repair, and scoured.

The Soil of Highways, Publick or Private, belongs to him on whose Land it is on each Side of it. *Berry ver. Goodman, 2 Leon. 148.*

By Stat. 8 & 9 W. 3. c. 15. five Justices at Quarter-Sessions have a Power of enlarging Highways, not to take in above eight Yards in Breadth. No Power to pull down any House, or take away the Ground of any Garden, Orchard, Court or Yard. Justices may impanel a Jury who must take an Oath, that they will assess such Damages to the Person whose Ground is taken, as they shall think reasonable, not exceeding Twenty-five Years Purchase, besides reasonable Recompence for a new Ditch and Fence to that Side of the Way that shall be so enlarged, and also Satisfaction to any other Person injured by, &c. five Justices may order one or more Assessments to be made on the Inhabitants of the Parish, who ought to repair; the same Money raised to be accounted for and employed according to Justice's Order towards purchasing such Lands, &c. and enlarging Highways, &c. on Refusal of Payment in ten Days of aforesaid Rates Overseer by Justice's Order may levy by Distress, &c. no Assessment to exceed 6d. per Pound in one Year. Justices to give Notice to Owners of the Ground, to appear at Sessions, and shew Cause why Ways should not be enlarged. Person aggrieved may appeal to Judge or Assize, at the next Assize only, who may affirm or reverse the same; and if they see cause to affirm, to award Costs against the Appellant. And after an Order is made for the laying out of Ground for enlarging Highways, the Owner hath Liberty in eight Months after to cut down any Wood or Timber growing upon the said Ground; or upon neglect, the Justices shall sell it, and deliver to the Owner the Value. Highways enclosed after a Writ *Ad quod damnum*, &c. Persons aggrieved by such Enclosure, may appeal to Quarter-Sessions next after such Inquisition who have a Power finally to determine such Appeal. 8 & 9 W. 3. c. 15.

By Stat. 6 Ann. c. 29. No Cart or Carriages, except for Husbandry, Manuring of Land, Hay, Straw, Corn, Coal, Chalk, Timber for Shipping, Materials for Building Stones of all Sorts, or Ammunition, &c. for his Majesty's Service, shall be drawn with above five Horses, on Forfeiture of 5*l.* to the Amending the Way and the Informer; Penalty to be levied by Distress of all or any of the Horses, &c. by Warrant from one Justice, if not paid in three Days to sell the same, rendering Overplus.

(a) Are excepted by 1 Geo. 1 c. 11. With what Number of Horses, &c. Carriages must be drawn, &c.

Overplus, Charges first deducted. Surveyor neglecting to put the Act in Execution forfeits 5*l.* 6 *Ann. c. 29.*

By Stat. 9 *Ann. c. 18.* It is enacted, that any Person may distrain or seise Horses, Oxen or Beasts drawing with more than six Horses (against the Stat. 6 *Ann. c. 29.*) and deliver them to the Surveyor, or other Parish Officer of the Place where the Offence shall be committed: And if the Penalty of 5*l.* inflicted by that Act is not paid in three Days, the Surveyor or other Parish Officer may by a Warrant of one Justice, sell the Distress, and deliver the Money to the Justice, who must distribute it as by that Act is directed.

(a) One Moiety to the Surveyor, the other to the Prosecutor.

The Person seising, &c. but neglecting to bring the Cattle to the Surveyor or Parish Officer, forfeits 20*l.* to be levied by Warrant of one Justice by Distress and Sale, &c. and for want thereof to be sent to the Gaol till paid, one Moiety to the Repairs of the Highways, the other to the Informer; the Surveyor neglecting to deliver the Sum by him received to the Justice, forfeits 20*l.* to be levied as aforesaid.

Person seising, neglecting to bring Cattle to the Surveyor, forfeits 20*l.*

Any Person employed by a Carrier or another, and subjected to the Penalties in that Act, and driving or assisting to drive any travelling Waggon or Cart with more than six Horses, &c. shall forfeit 5*l.* to be levied and disposed as aforesaid.

Person employed by a Carrier, forfeits 5*l.*

And where six Horses, &c. are not sufficient to draw up Hill, or out of any foul Way, any Person may by Consent of the Owner or Driver, &c. add more Horses, &c. from any other Cart or Waggon on the Road. 9 *Ann. c. 18.*

May add more Horses from other Waggon, &c. on the Road to help up Hill, &c.

By Stat. 5 *Geo. 1. c. 12.* No Waggon travelling for Hire, shall be drawn with more than six Horses, either in Length, or in Pairs, or Side-ways; no Cart travelling for Hire, shall be drawn with more than three Horses, on Forfeiture of all the Horses above six in the Waggon, with all the Furniture belonging to the said Horse or Horses, and all the Horses above three in the Cart, &c. by Owner or Driver, for the Use of the Person seising the same; who must deliver such Horse or Horses to the Constable, or other Parish Officer of the same, next or adjacent Town where seised, who is to keep the same 'till the Person making the Seizure hath made Proof upon Oath, before any one Justice, of the Offence committed; which said Justice shall issue his Precept to the Constable, or, &c. to deliver the Horse, &c. forfeited to the Party or Parties who seised the same, paying such reasonable Charge for keeping the same, as the said Justice shall allow.

If Waggon is drawn with more than six, or Cart with more than three Horses, any Person may seise all above that Number.

No



N. B. The Forfeiture the same, if the Streak or Tire be of greater Breadth, if fastned on with Rose headed Nails.

No Waggon travelling for Hire, having the Wheels bound with Streaks, or the Tire of a less Breadth than two Inches and a Half when worn, or being set or fastned on with Rose-headed Nails, shall be drawn with more than three Horses, on Forfeiture of all the Horses above three, by the Owner or Driver, together with their Furniture, to be seized and recovered as aforesaid: Any Person by Force, or otherwise, hindring or endeavouring to hinder such Seizure, on Proof made of it on Oath by one Witness, before one Justice, shall for the said Offence be committed to Gaol for three Months without Bail or Mainprize, and shall forfeit 10*l.* to be levied by Distress by Warrant from the said Justice; if Money not paid in three Days, Sale, rendring Overplus to the Owner, after Charges deducted; not to extend to Carts and Waggon employed about Husbandry, manuring Land, carrying of Cheese, Butter, Hay, Straw, Corn unthreshed, Coals, Chalk, or any one Tree or Piece of Timber, or any Stone or Block of Marble.

To what this Statute is not to extend.

Caravans covered, Carriages of Noblemen and Gentlemen for their own private Use; or such Timber, Ammunition, or Artillery for his Majesty's Service, his Heirs and Successors, are excepted. If any Action commenced and Plaintiff discontinue his Suit, or be nonsuited, or Judgment given against him, Defendant shall recover full Costs of Suit. 5 *Geo. 1. c. 12.*

What Weight Carts or Waggon are to carry in London and Westminster, or ten Miles thereof.

By Stat. 6 *Geo. 1. c. 6.* No Person shall carry in the City of London and Westminster, or within ten Miles thereof, in Carts or Waggon, having their Wheels bound with Iron at any one Load, more than seven Hundred and a Half of Bricks, one Chalder of Coal, twelve Sacks of Meal, of five Bushels to the Sack, and twelve Quarters of Malt, on Forfeiture of one of the Horses, with the Gear, Furniture, &c. to any one who shall seize the same in such Manner as the Penalties are directed, to be levied and applied by the Stat. 5 *Geo. 1. c. 12.* relating to Carriages drawn on the Highways.

Oath is to be made of the Offence before a Justice of Peace, who on Conviction is to order the Forfeiture to the Seisor, &c.

Persons who are bound to repair the Pavements before their own Houses at their own Costs, are also obliged to contribute to the Payment of the Scavengers Rates for as to their paving before their own Doors they have the principal Benefit of, and that is no Reason to excuse them from Parochial Duties. 5 *Mod. 68. 1 Salt. 33.*

Justices of Peace must particularly express what they are appointed for working on the Highways, and

appoint six Days generally between such a Time and Justice must such a Time. On Indictment for not working towards particularly the Reparation of the Highways, according to the Statute, setting forth that six Days *inter* such a Time and express what such a Time were limited, and the Defendant did not Days are appointed for work upon any of the Days, the Indictment held naught, the Highway. for the particular Days ought to be set forth. 1 *Salk.*

*Rep.* 357. *Pasch.* 2 *Ann.* B. R.

If a Way be foundrous, and there be Outlets from Where a Way the Land adjoining, the People may travel upon the is foundrous Soil, though sown with Corn; and if a Way be through Passengers may a Man's Lands and he fences it in, he by that hath break into bound himself to repair the Highway, though the Parish Lands adjoining, tho' sown with Corn. did it before; but if he lay it open again, then is he no longer obliged to repair it. 1 *Cro.* 366. *Trin.* 10 *Car.*

*Duncomb's Case.* *Roll's Abr.* 390. *Saund.* 160.

N. B. It is not enough for Parishioners to work the The Parish li- full six Days yearly on the Highways, except that there- able to be in- by the Ways are sufficiently repaired; for if they be not, dicted where the whole Town may be indicted; and a Highway lying the Ways are foundrous, out of any Parish, ought to be repaired by the whole notwithstanding they work the whole six County. Days.

On an Information in the Crown-Office for not repair- ing an Highway, they say one Part of the Parish ought; by the Chief Justice, you may plead Not guilty, and give in Evidence that Part of the Parish that ought to Repair.

If a Manor be held by the Service or Tenure of re- pairing a common Highway or Bridge, and that Manor afterwards comes to be divided into several Hands, every one of the Alienees being Tenants of any Parcel, either of the Demesnes or Services, shall be liable to the whole Charge, and are contributory among themselves. And though the Manor, subject to such Charge comes to the Crown, yet the Duty upon it still continues; and all claiming under the Crown afterwards shall be liable to Indictment or Information for want of Repairs. *Salk.*

358.

It is not justifiable to stop one Way (which was bad) and lay out another (without Authority). 1 *Cro.* 266. *Styke* 139. *Moore* 180. *Co.* 9 *Rep.*

*Pop.* 142.

An Action for stopping or incroaching upon an High- way, is not maintainable without particular Damage, and the usual way is by Indictment. *f.* 33. *Keilway* 53 a. *pl.* 4. *Trin.* 22 *Ca.* 2.

If a Man be obliged to repair the Highway *ratione* 1 *Sid.* 402, 467, 469. 2 *Sand.* 160. *tenure* of certain Lands, although he lay those Lands open to the said Way, he continues still liable to repair it. *Trin.* 21 *Car.* 2. *Roll.* 406. 2 *Saund.* 160, 161.

By

What is a  
Highway.

By *Hale*, Chief Justice, if a Way lead to a Market, and were a Way for all Travellers, and does communicate with a great Road, &c. it is an Highway; but if it leads only to a Church, to a private House or Village, or to Fields, there 'tis a private Way; but 'tis a Matter of Fact, and much depends upon common Reputation. 1 *Vent.* 189.

An Indictment will not lie for a common private Way, but an Action on the Case. 2 *Vent.* 208.

*N. B.* No Ways are properly under the Cognizance of the Surveyors of the Highways, unless they are common Highways.

He that hath a Plough-Land, though he hath no Plough, but doth suffer his Land to lie fresh, yet he is to find a Team for this Work, and so it hath been agreed by the Judges. *Mich.* 21 *Jac.* 1.

Distress for  
Rent can't be  
made in the  
Highway.

Distress for Rent-Service cannot legally be made in the Highway, by Stat. *Marlb. c.* 75. 3 *Cro.* 710. and where a Lord of a Manor distrains in the Highway, the Tenant may have an Action of Trespass, or make Rescous. 17 *E.* 3. *c.* 1. &c. and there can be no Prescription against a Statute. 9 *H.* 6, 56. &c.

### Statutes which concern Highways and Bridges in particular Places.

**B** Edford, 5 *Ann.* 8 *Ann.* 9 *Ann.* 12 *Ann.* 3 *Geo.* 1. 9  
*Geo.* 1. 11 *G.* 1. 13 *G.* 1.  
Berks, 12 *Ann.* 4 *Geo.* 1. 12 *G.* 1. 1 *G.* 2. 3 *G.* 2.  
Bucks, 7 *Geo.* 1. 13 *G.* 1. 1 *G.* 2.  
Cambridge, 35 *H.* 8. *c.* 15. 15 *Car.* 2. *c.* 4 & 5 *W.*  
& *M.* *c.* 9. 10 & 11 *Geo.* 1. 13 *G.* 1. 3 *G.* 2.  
Cardiffe, 23 *Eliz.* *c.* 11.  
Carleon, 23 *Eliz.* *c.* 11. 39 *Eliz.* *c.* 23.  
Chepstow, 3 *Jac.* 1. *c.* 23.  
Chester, 37 *H.* 8. *c.* 3. 4 & 5 *Ann.* *c.* 29. 4 *G.* 2.  
Chichester, 18 *Eliz.* *c.* 19.  
Cumberland, 43 *Eliz.* *c.* 16. 11 *G.* 1.  
Dorset, 1 *Mar.* *c.* 5.  
Essex, 7 & 8 *W.* *c.* 9. 1 *Ann.* *c.* 10. 8 *Geo.* 1. 10  
*Geo.* 1. 12 *G.* 1.  
Gloucester, 9 & 10 *W.* *c.* 18. 12 *W.* 3. *c.* 9. 9 *Geo.* 1.  
11 *G.* 1. 13 *G.* 1. 3 *G.* 2. 4 *G.* 2.  
Hereford, 39 *Eliz.* *c.* 24. 7 *Geo.* 1. 13 *G.* 1. 2 *G.* 2.  
Hertford, 15 *Car.* 2. *c.* 1. 16 & 17 *Car.* 2. *c.* 10.  
10 *Ann.*



- 10 *Ann.* 4 *§* 5 *W. & M. c.* 9. 5 *Ann. c.* 11. 7 *Geo.* 1.  
 9 *Geo.* 1. 12 *G.* 1. 3 *G.* 2.  
 Huntington, 4 *§* 5 *W. & M. cap.* 9. 9 *Ann.* 12 *Ann.*  
 13 *G.* 1. 1 *G.* 2.  
 Ipswich, 13 *Eliz. c.* 24.  
 Kent, 15 *H.* 8. *c.* 5. 26 *H.* 8. *c.* 7. 18 *Eliz. cap.* 10.  
 27 *Eliz. cap.* 26. 39 *Eliz. cap.* 19. 8 *Ann.* 11 *Ann.* 10  
 11 *Geo.* 1. 1 *G.* 2. 3 *G.* 2.  
 Lancaster, 11 *G.* 1. 13 *G.* 1. 3 *G.* 2. 4 *G.* 2.  
 Leicester, 12 *G.* 1.  
 London, 24 *H.* 8. *cap.* 11. 25 *H.* 8. *cap.* 8. 32 *H.* 8.  
 17. 34 *H.* 8. *c.* 12. 13 *Eliz. c.* 23. 23 *Eliz. c.* 12.  
 19 *Car.* 2. *c.* 3. 22 *§* 23 *Car.* 2. *c.* 17. 3 *§* 4 *W. & M.*  
 12. 5 *Ann. c.* 12. 1 *G.* 2.  
 Middlesex, 10 *Ann.* 11 *Ann.* 12 *Ann.* 1 *Geo.* 1. *c.* 37.  
 3 *Geo.* 1. 7 *Geo.* 1. 8 *Geo.* 1. 10 *§* 11 *Geo.* 1. 11 *G.* 1.  
 12 *G.* 1. 1 *G.* 2. 2 *G.* 2. 4 *G.* 2.  
 Newport, 23 *Eliz. c.* 11. 39 *Eliz. c.* 23.  
 Norfolk, 27 *Eliz. c.* 24. 7 *§* 8 *W. c.* 26. 7 *Ann.*  
 10 *Ann.* 10 *Geo.* 1. 12 *G.* 1.  
 Northampton, 8 *Ann.* 11 *G.* 1.  
 Nottingham, 12 *G.* 1.  
 Oxford, 18. *Eliz. c.* 20. 5 *Geo.* 1. 3 *G.* 2.  
 Rochester Bridge, 18 *Eliz. c.* 17. 27 *Eliz. c.* 15.  
 Salop, 12 *G.* 1.  
 Somerset, 1 *Mar. c.* 5. *§* 6 *Ann.* 7 *Geo.* 1. 3 *G.* 2.  
 Southampton, 9 *Ann.* 4 *Geo.* 1. 12 *G.* 1.  
 Stafford, 12 *Ann.* 13 *G.* 1. 2 *G.* 2.  
 Suffolk, 10 *Ann.*  
 Surrey, 39 *Eliz. cap.* 19. 8 *§* 9, 10 *W.* 3. *cap.* 15.  
 10 *Geo.* 1. 10 *Geo.* 1. 1 *G.* 2.  
 Sussex, 15 *H.* 8. *c.* 6. 26 *H.* 8. *c.* 7. 39 *Eliz. c.* 29.  
 10 *G.* 1. 10 *G.* 1. 4 *G.* 2.  
 Warwick, 10 *Geo.* 1. 11 *G.* 1. 12 *G.* 1. 3 *G.* 2.  
 Wilts, 5 *Ann.* 12 *Ann.* 4 *Geo.* 1. 11 *G.* 1. 12 *G.* 1.  
 3 *G.* 1. 2 *G.* 2.  
 Worcester, 12 *Ann.* 12 *G.* 1. 13 *G.* 1. 1 *G.* 2.  
 York, 11 *G.* 1. 12. *G.* 1. 13 *G.* 1.

As to Indictments about Highways, they are either :

1. For obstructing or stopping a Way, or 2. For repairing. 3. For Nulance : Or 4. For not working them.

1. For obstructing or stopping a Way.

An Indictment for stopping the King's Highway  
*Kensington*, good without saying from such a Place  
 such a Place ; otherwise of a common Way. *Noy* 90.  
*Saund.* 157.

An Indictment for stopping a Way to a Church, without saying *communis via*, good. *Poph.* 206. 2 *Saund.* 157. *Latch* 185.

It was my Lord *Hale's* Opinion, that every Inhabitant of the Parish may have an Action upon the Case for stopping the Way to the Church.

An Indictment against Lord of a Manor stopping of a Highway in his own Lands, is good without laying the Offence done, *vi & armis*. *Poph.* 206.

2 *Co.* 524.  
1 *Vent.* 238.

For stopping *quandam partem Aquæ*, it was quashed, for it should have been *terram aqua coopertam*. A Man was indicted for stopping *communem viam pedestrem ad Ecclesiam de H.* and it was held, if the Way had been alledged, to be *pro Parochianis*, it had made the Indictment ill; for then the Nuisance would extend no farther than the Parish, and every Parishioner might have an Action; but it was laid *ad commune nocumentum*; and in such Case the Church shall be only intended the *Terminus ad quem*. 2 *Co.* 524. 1 *Vent.* 238.

Ad quod damnum pleaded.

Where the Defendant pleaded, that he laid out a more commodious Way, and that before it was done he brought a Writ of *ad quod damnum*, &c. *vis.* Whether it should be a Damage if the King should give a License to stop up the old Way; and upon the Inquisition taken, it was found that 'twas no Damage.

This was held no good Plea, because he did not plead that he had obtained the King's License; neither did he set forth by what Authority he laid out the Way; for 'tis but at his Pleasure, and he might stop it when he would. *Cro. Car.* 266.

Indictment to specify how much of the Way is obstructed.

An Indictment for stopping *quandam partem Vie Regiæ apud G.* is not good without alledging how much Breadth and Length. *Roll. Abr.* 2. part 81. but you must not say *per æstimationem*, for that is uncertain.

(Divert) no proper Term for a Way.

The Word (Divert) not being a Term proper and applicable to a Way which may be obstructed, but cannot be diverted, therefore a Presentment in a *Lect* for diverting a Way is void.

4 *Leon.* 121.

An Indictment for stopping a Way *valde necessario* for the Subjects, quashed, because it did not alledge it to be *Regiam viam*. *Leon.* 121.

*Cro. Eliz.* 148.  
1 *Vent.* 4.

The like for alledging it to be *ad nocumentum diversorum*, &c. it should be of all the People. *Cro. Eliz.* 148. 1 *Vent.* 4.

The Information was for stopping, and the Evidence was, that he ploughed it, and held good.

2dly, For not repairing the Highways.

Upon not Guilty pleaded, the Decay only comes in Question, for if another Person ought to repair, it must be pleaded. *Pasch. 26. Car. 2. per Hale.*

On not Guilty the Decay only comes in Question.

*Non debet reparare* is a bad Issue, but yet if found for the Defendant, and not who ought to repair, he shall be acquitted, tho' no Judgment can be given upon such a Verdict. *Sid. 140.*

A Prescription to repair *ratione tenuræ* is not good, because it ought to be by Custom, which is local, viz. that in such a Place, there has been a Custom Time out of Mind, &c. to repair. *Sid. 464. Style 400.*

Where a Man is indicted for not repairing *ratione tenuræ*, omitting the Word *sua*, 'tis well enough, for the Forms are both ways, and in the later Indictments the Word *sua* is often left out. *Latch 206. 1 Vent. 331.*

When a Person by any Enclosure straitens a Highway on both sides, tho' the Parish repaired it before, yet now he is obliged to maintain it at his own Charge; but if he abates the Enclosure, and leaves the way open as it was before, then the Parish is to repair it again. *Cro. Car. 366. Saund. 160. Roll's Abridg. 390. Trin. 10 Car. Duncombe's Case.*

How a Person makes himself liable to repair an Highway.

Tho' the King have granted before 2 & 3 Ph. & M. that Lands shall be exempted from repairing, &c. Yet that is not a good Discharge for the Land. 3 Mod. 96.

A Highway is that which leads from one Market Town to another, and is to be repaired of common Right by the Parish where the Decay is, unless some other Person is bound by Prescription or Custom, and therefore *reparare debet* generally, without shewing how, is not good.

Highway is to be repair'd by the Parish.

But if the Defendant pleads *reparare non debet*, and 'tis so found, he shall be acquitted, tho' it doth not appear who should repair, and the Reason may be because *de communi jure* the Parish is bound to repair their own Highways, and therefore they are never allowed to plead not guilty, and give in Evidence that another ought to repair by Prescription or Tenure, for if they would discharge themselves, they must plead it. *Sid. 140. 1 Vent. 256.*

*Sid. 140. 1 Vent. 256.* If Parish have Matter to discharge themselves, must plead it.

A common Way is that which leads from a Village or Town to the Parish Church or Fields; 'tis also called a private Way, and is to be repaired by the Village or Hamlet, and sometimes by a private Person; if such a Way be out of repair, every Inhabitant may have an Action, but an Indictment will not lie. 4 *en. 203.*

How a private way is to be repaired.



But a Hamlet within a Parish cannot be charged generally to repair without Prescription, &c. *Style* 163.

Indictment for not repairing a ruinous House standing on the Highway, and likely to fall; and this was brought against a Tenant at Will and alledged, that he was bound to repair *ratione tenuræ*; *sed non allocatur*; for the Occupier is answerable to the Publick, who are to look to him, and not to what Estate he hath in the House.

Tho' a Parish pays a Fine, 'tis not enough unless the Way be repaired.

Where a Constable is necessary.

If the Inhabitants of a Parish are indicted for not repairing a Way, and they submit to a Fine, and pay it: This is not enough, for Writs of *Distringas* shall be awarded *in infinitum* till 'tis repaired.

If the Defendant before Verdict brings a Certificate that the Way is repaired, then he may submit to a Fine, but after a Verdict such Certificate will not do, because the Conviction being upon Record must be answered by Matter of as high a Nature, and that must be a *Constat* to the Sheriff, who may return that 'tis amended. *Raym.* 215.

Court would not quash Indictments, before the Way was repaired.

Many Indictments were exhibited severally against several Men, because each by himself suffered his Door to be unrepaired, and it was shewed in the Indictments that every one ought to repair, and thereupon, 'twas moved that they might be quash'd; but the Court would not quash them without Certificate that the Parties had repaired their Doors. *Trin.* 15. *Car.* 1. *Marche's Rep.* 45. *Pl.* 71. See *Style* 364. *p.* 159.

Of Common Right all the County ought to repair the Highway (except where some are particularly bound to repair it) because the Country have their Ease and Passage by it. *Co. Rep.* 13. *p.* 33. *Pasf.* 7. *Ja.* 1.

Indictment quash'd where two Parishes jointly indicted, when they shou'd have been several.

An Indictment against the Inhabitants of *Shoreditch* and *Hackney* in *Middlesex*, for not repairing the Highways, was quash'd, because the Parishes were jointly indicted, which ought to have been several. *Style's Rep.* 157.

Hamlet not chargeable to repair Highways.

An Indictment against the Inhabitants of *Mile-End* within the Parish of *Stebonheath*, alias *Stepney*, for not repairing the Highway, was quash'd, because *Mile-End* but a Hamlet within a Parish, which cannot be charged to repair a Highway, except it be by Prescription, or for some other special Reason, but the whole Parish or Vill is to be charged. *Style's Rep.* 163.

How an Indictment was quash'd.

An Indictment for not repairing a Highway was quash'd, because it did not set forth from what Place to what Place the Way did lead. *Style's Rep.* *p.* 35.

tho' it hath been held otherwise in *Halset's Case*. Mich. 2 Car. 1. *Noy's Rep.* p. 90.

An Indictment against Sir *Richard Lucy* for not repairing a Highway was quash'd, because it was not shew'd of what Place he was an Inhabitant. *Noy's Rep.* p. 87. *Benlowe's Rep.* p. 198.

Where one was presented at Sessions for not repairing a Highway, which he ought to repair in respect of his holding certain Lands, Parcel of the Way unrepair'd, and also which Lands he had inclosed and incroached, on Removal into B. R. the Court were of Opinion, that he ought to have been charged either by reason of his holding the Land singly, or by his incroaching singly, and *Kelynge C. J.* said, that tho' by incroaching upon the Highway, he became liable to repair it so long as the Incroachment continued; but so soon as he lays the Land open again to the Way, he shall be discharged from the Repair of it: But where a Man is obliged to repair a Highway in respect of his holding any Lands, altho' he leaves those Lands open to the Way, yet he is always obliged to repair the Way. *Trin. 22 Car. 2. B. R. Saunders* p. 260. *Sir Nicholas Stoughton's Case*.

Where one is oblig'd to repair by reason of Tenuie, and where by reason of Inclosing, &c.

The same Case is in *1 Siderf. p. 464.* where *C. J.* said, none denying it, that if one inclose Land of one side the Highway, which was anciently inclosed of the other Side, he who made the new Inclosure shall repair all the Way: But if there had not been an ancient Inclosure of the other Side, he shou'd have repaired but Half the Way: But if one make a new Inclosure of both sides the Way, there he shall repair all the Way, agreeable to *Sir Edward Duncomb's Case*. *Trin. 10 Car. 1. Cro. Car.* 366.

Where one is obliged by inclosing an Highway.

*C. J. Hale* said in *Austin's Case*, *Hil. 23 & 24 Car. 2.* that if there be no special Matter to fix the Repair of the Highways upon others, the Parish where the Highway is ought to repair it of common Right. *Vent. Rep.* p. 183 & p. 189.

See the Form of a Conviction for Highways upon the View of a Justice of Peace. *Kelyng's Rep.* 33, 34.

An Indictment against *S.* for not repairing the Highway, the Way laid to be the King's Highway, or the common Street, quash'd, because it was not laid for all the King's Liege People. *B. R. Hill. 9 W. 3.* The King against *Sanders*. *Co. Lit.* 56. *Cro. Eliz.* 53.

3dly, For a Nufance in the Highway.

An Indictment for a Nufance in a Horfeway was quash'd, because it ought to have been the Queen's

Where it ought to be said the Queen's Highway.

Highway or the Highway. *Mich. 29 Eliz. B. R. Cro. Eliz. 63. Co. Lit. 56. a.*

The Indictment must conclude *ad commune nocumentum ligeorum, &c.* if 'tis restrained by the Words *prope inhabitantium*, it will be quash'd. *1 Roll. Rep. 406. 1 Vent. 26.*

Upon an Indictment for a Nuisance, the Court never admits the Person to a small Fine till 'tis removed, and Affidavit made thereof, or else certified by two Justices. Neither ought the Defendant to take any Exceptions to the Indictment till he hath pleaded to it.

Gates must be  
anciently set  
up in Ways by  
Licence, to be  
justifiable. *2*  
*Roll. Abr. 137.*

'Tis a Nuisance to erect a Gate cross a Highway, tho' the Gate is easy to be opened, any Man may break it or cut it. *Cro. Car. 185. Cro. Car. 133. Jones's Rep. 221. Jones and Harward.* So 'tis to erect a Dam on his own Land, and Part of it on another Man's Land, and therefore the other Person may pull his Part down, tho' the Owner's Part fall.

In Indictments for Nuisances, the Place in which the Nuisance complain'd of was done, is to be express'd.

When there  
must be a Cer-  
tificate, that  
Nuisance is re-  
moved.

On an Indictment the Defendant must produce a Certificate, that the Nuisance is removed, before he can take Exceptions to it, but a Presentment in such a Case must be quash'd without a Certificate, &c.

An Indictment for putting a Laystall next a Highway, not good, without shewing from and to what Place the Way leadeth. *2 Roll. Abridg. 81.*

*4thly*, For not working on the Highways.

What Notice  
must be set  
forth.

In *Easter Term 20 Car. 2.* In an Indictment Notice was alledged, *Die Dominica post festum, &c.* and did not say *proxima*, which ought to be by the Statute *2 & 3 Phil. & Mar. c. 8.* for which Reason it was quash'd.

If a Man hath eight Plow-Lands, tho' 'tis all Pasture, he ought to find eight Teams for six Days. *Raym. 186.*

Occupier of  
Lands only is  
chargeable.

The Indictment was, that the Defendant *habens tantam terram* did not work; and it was objected that the Defendant might have Lands and not use them himself; and this was held to be material, for in this Case the Statute charges the Occupier.

An Information was for stopping a Way, and the Evidence ploughing it, and held good. *1 Vent. 4.*



## A Warrant to levy the Forfeiture of a Constable, or, &c. for refusing or neglecting to return the Lists.

**W** Hereas C. D. the Constable or Tithing-Man of the Parish of, &c. in the County aforesaid, hath refused or neglected to make and return a List of the Names of a sufficient Number of Inhabitants of the said Parish of, &c. qualified by Law to serve the Office of Surveyor or Surveyors of the Highways in the said Parish for the Year ensuing, notwithstanding we sent our Precept to him, requiring the same this Day at, &c. being a special Sessions held for the electing of such Surveyors, and for putting the Laws in Execution for repairing of Highways, whereby he hath forfeited the Sum of 20s. These are therefore in His Majesty's Name to command you to levy the said Sum of 20s. by Distress and Sale of the Goods of the said C. D. rendring to him the Overplus, if any such shall happen to be, the necessary Charges of distraining being first deducted. Given, &c.

3 &c 4 W. & M.  
c. 12. 2 Justices.  
1 Witness upon Oath.

## A Warrant to levy the Forfeiture for refusing to serve the Office of Surveyor, &c.

**W** Hereas C. D. of, &c. was, at a special Sessions held on the 3d Day of this Instant January, lawfully nominated and appointed to serve the Office of Surveyor of the Highways in and for the Parish, of, &c. for the Year ensuing; and it having been duly proved before us, That the said C. D. had Notice of the said Nomination within six Days after the same, and that he hath refused to take upon him the said Office, whereby he hath forfeited the Sum of 5l. One Moiety thereof to be paid to E. D. of, &c. who hath informed us of the said Offence, and the other Moiety to be applied towards the repairing the Highways: These are therefore to command you to levy the said Forfeiture of 5l. on the Goods and Chattels of the said C. D. by Distress and Sale thereof, to be paid and employ'd as aforesaid, and that you do forthwith return to us or some other Justice, &c. the Names of other Persons within your Parish fit to serve the said Office of Surveyor, that the Business of the Highways may not be neglected. Given, &c.

Moiety to Informer, the other to amend the Highways.  
2 &c 3. P. & M.  
c. 8. Two Justices.

A Warrant to impower the Surveyors to dig Gravel, &c. upon Wastes or Commons out of the Parish.

5 Eliz. c. 13.  
Two Justices.

Essex, ff. **F**Orasmuch as (by the Information of the Surveyors of the Highways in the Parish of A. in the County aforesaid) it appeareth unto us, that there is not sufficient Gravel, Chalk, Sand, Cinders and Stones within the said Parish, to repair the common and publick Highways: We do therefore, according to the Form of the Statute in that Case lately made and provided, hereby allow and approve that the said Surveyors, or either of them, and such Person or Persons, as they or either of them shall appoint, shall and may dig, take and carry away Gravel, Chalk, Sand, Cinder or Stone out of any Waste or Common of any Parish, Town, Village or Hamlet neighbouring to the Parish aforesaid, or upon the Sea-Coast, without paying any thing for the same (for the Repairing and Amending of the Highways aforesaid) so as they fill up the Place within one Month next after their Digging aforesaid (if required by the Owner of the Soil.) Given, &c.

A Warrant to levy the Forfeiture on a Surveyor, for not erecting a Post at Cross-ways for Direction of Travelers.

8 & 9 W. 3.  
c. 16.

**W**Hereas the Post sometime since erected and set up in the Highway leading to, &c. at the Meeting of several Cross-ways therein, is decayed and consumed, so as to be render'd useles, and E. D. &c. Surveyor of the Highways in the said Parish of, &c. being order'd by us to erect, fix, and set up a new Post at the Meeting of the Cross-ways aforesaid, with an Inscription thereon in large Letters, setting forth the Name of the next Market-Town, to which each of the said Cross-ways leads, according to the Act of Parliament in that Case made, hath neglected to do the same, whereby he hath forfeited the Sum of 10s. to be employed towards the Erecting and Setting up such Post: These are therefore to require you to levy the said Sum of &c.

## The Form of an Assessment for repairing the Highways.

**A**N Assessment made on the Inhabitants of the Parish of, &c. in the County of, &c. for and towards the Repairing and Amending of the Highways in the said Parish, the Year, &c.

|                |       |       | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|----------------|-------|-------|-----------|-----------|-----------|
| J. K. Gent.    | _____ | _____ | 0         | 7         | 6         |
| G. H. Yeoman   | _____ | _____ | 0         | 5         | 0         |
| E. F. Merchant | _____ | _____ | 0         | 5         | 0         |
| C. D. Esq.     | _____ | _____ | 0         | 5         | 0         |
| A. B. Esq.     | _____ | _____ | 0         | 3         | 0         |

Memorandum, *This Day, &c. the above Assessment was allowed and confirmed by us, &c. two of his Majesty's Justices of the Peace for the County of, &c. aforesaid, and we do hereby empower, &c. Surveyor of the Highways in the said Parish to ask, demand and levy the same of the several Persons concerned, as the Act of Parliament directs, (or to levy the same by Distress, if not paid in ten Days.)* Given under our Hands and Seals the Day and Year above-written.

*A. P.  
D. T.*

Two Justices may cause a Rate to be made for Re-im-bursing of a Person, where a Fine or Penalty is levied on him for the Parish's Neglect in repairing of the Highways.

If any Persons find themselves aggrieved by these Assessments, or any Act by the Justices of the Peace, the Justices at their General Quarter-Sessions are to take Order therein, which shall conclude all Parties.

## A Warrant to distrain on a Rate and Assessment made for repairing of Highways.

**W**Hereas a Complaint has been made unto us, That the several Persons here under-named have not paid unto you the Sums of Money assessed on them for the repairing and amending of the Highways in the said Parish of, &c. but that they refused to do the same when demanded, contrary to the

3 & 4 W. &  
M. C. 12.



*the Laws in that Case made and provided : These are therefore to require you to levy the several Sums here-under mentioned, on the Goods and Chattels of the several and respective Persons herein specified, and that you do employ the said Monies in such Manner as by the Statutes is directed and appointed. Given, &c.*

### A Warrant to reimburse a Surveyor by charging him who ought to repair, and who neglected after Notice, &c.

One Justice.

Essex, ff. **W** Hereas it hath been duly proved before T. C. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, That S. T. of, &c. ought to repair a certain Highway in, &c. as often as the same is in Decay : And whereas upon Oath made before me this present Day, by T. P. Surveyor of the Highways in and for the said Parish, that he having found a Default in the said Way, did the next Sunday afterwards, as soon as Sermon was ended, give publick Notice thereof in the Parish Church of, &c. and that the same was not amended within thirty Days after ; whereupon the said T. P. did, within thirty Days next following, amend the said Default, and that the said S. T. who should have done the same, hath refused to pay the aforesaid T. P. the Charges thereof : These are therefore to will and require you forthwith upon Sight hereof to levy the Sum of (a) Twenty Shillings by Distress and Sale of the Goods of the said S. T. and that you pay the same to the said T. P. which said Sum I think reasonable to be levied as aforesaid, in order to reimburse him the Charges laid out in amending the said Way ; and hereby fail not. Given, &c.

(a) It is as the Justice shall think reasonable.

### A Warrant against a Surveyor refusing to Account.

Two Justices,  
one Witness  
upon Oath.

Essex, ff. **W** Hereas it hath been duly proved before W. D. D. and R. B. Esquires, two his Majesty's Justices, of the Peace for the County aforesaid, that J. O. of, &c. Surveyor of the Highways in and for the said Parish, hath neglected to give an Account upon Oath at any Special Sessions of all Money which hath come to his Hands, and which ought to be employed in amending the Highways, and how he hath disposed thereof, so that for such his Neglect he hath forfeited the Sum of 40s. one Moiety to the Informer, and the other to repair the Highways in the said Parish : These are therefore, &c.

A Warrant against a Surveyor refusing to deliver what remains in his Hands to the succeeding Surveyors.

**W** Hereas S. C. of, &c. this Day made Oath before us Two Justices, R. K. and P. T. Esquires, two of his Majesty's one Witness, Justices of the Peace, &c. that M. N. now or late Surveyor of the Highways, in and for the Parish of H. &c. hath refused to deliver to the next Surveyors of the Highways in the said Parish what Monies remained in the Hands of the said M. N. which ought to be employed in amending the said Ways, which said Money doth amount unto 40s. by Reason whereof he hath forfeited double the Value; one Moiety to the Informer, the other to amend the Highways in the said Parish: These are therefore, &c.

A Warrant to levy the Forfeiture for not sending a Team and Workmen to work on the Highways.

**W** Hereas C. D. Surveyor of the Highways of and in 2 &c 3 P. & M. the Parish of, &c. in the County aforesaid, hath c. 8. this Day made Oath before us, That A. B. who keeps a Horse-Team, and hath a Plow-Land in the said Parish of, &c. did refuse to send any Team to work in the repairing of the Highway on, &c. last past, one of the Days appointed for that Purpose, though he had due Notice given him by the said C. D. contrary to an Act of Parliament in that Case made, whereby he hath forfeited the Sum of 10s. These are therefore in his Majesty's Name to command you to levy the said Sum of 10s. by Distress and Sale of the Goods of the said A. B. and when the same shall be so levied, that you do employ it for and towards the Amending the Highways in the said Parish of, &c. Given, &c.

A Warrant against Persons neglecting to work on the Highways.

Essex, ss. **W** Hereas due Notice hath been given unto A. B. G. P. J. O. and J. S. all of the Parish of H. aforesaid, Labourers, to work on the Highways in the said Parish on certain Days lately appointed

pointed for that Purpose in order to amend the same: And whereas it appeareth unto me by the Oath of, &c. that they and each of them have neglected or refused so to do: These are therefore to require you forthwith to levy the respective Sums hereafter mentioned, upon the respective Goods and Chattels of the said several Persons, by Distress and Sale thereof, that is to say,

|                                                                     | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|---------------------------------------------------------------------|-----------|-----------|-----------|
| Upon the Goods of <i>A. B.</i> for neglecting }<br>two Days _____   | 0         | 3         | 0         |
| Upon the Goods of <i>G. P.</i> for neglecting }<br>three Days _____ | 0         | 4         | 6         |

and that you employ the said Sums when levied, for and towards the Amending the Highways in the said Parish of H. And hereof fail not. Given, &c.

### A Warrant to levy the Penalty on a Person for pulling up Posts on a Causeway.

7 & 8 W. 3. c. Berks, ff. **W** Hereas *A. B.* of the Parish of *S.* in the said County of Berks, hath this Day given Information upon Oath before me, that on Monday last past, about Eight of the Clock in the Evening of the said Day, *C. D.* of the said Parish did cut down and carry away a certain Post out of the Causeway, adjoining to the Highway, leading from *P.* to *S.* in the said County, there set up for the Preservation of the said Causeway from Carts, &c. contrary to the Statute in that Behalf made: These are therefore in his Majesty's Name, to require and authorise you to levy the Sum of 20s. on the Goods and Chattels of the said *C. D.* which he hath forfeited for the Offence aforesaid. Given under my Hand and Seal, &c.

### A Warrant against a Person laying Dirt, &c. in the Street.

**W** Hereas Complaint has been this Day made unto me by *S. P.* &c. That *R. K.* an Inhabitant of your Parish on, &c. last past, laid in the Street before his House a large Quantity of Dirt, &c. to the great Annoyance of Passengers that pass that Way, and contrary to the Statute in that Case made and provided: These are therefore to command you to bring the said *R. K.* before me, or some other Justice,



Justice, &c. to answer the Premises, &c. or to levy by Distress and Sale of the Goods and Chattels of the said R. K. the Sum of 5 s. which he has forfeited by the Offence aforesaid, &c. Given, &c.

An Information against a Person drawing a Waggon with more Horses than allowed by Law.

THE Information of C. D. of, &c. taken before A. B. Esq; one of his Majesty's Justices of the Peace for the County of, &c. this Day, &c. The said C. D. saith on his Oath, that in and upon, &c. last past, he the said C. D. saw a Waggon belonging to, &c. of, &c. in the said County, Carrier, travel through the Parish of, &c. in the plain Road some Distance from any Hill, &c. drawn by seven Horses at length, which said Waggon was laden with Goods from, &c. and travelling for London.

Jurat' coram me  
die & Anno  
supradict.

*Drawing of travelling Carriages with more Horses than are allowed by Law, is a Nuisance by Statute, as it prejudices the Highways.*

The Precept of the Justice to deliver the Horse seized, and drawing with above Six Horses, to the Seisor.

Effex, ff. **W** Hereas on the Day of the Date hereof, it was duly proved before me upon the Oath of C. D. of the Parish of, &c. that a Waggon travelling in the Road for Hire on the, &c. of July, &c. last past in the Parish of, &c. aforesaid, and not employed in Husbandry, but loaded with Goods not excepted to be loaded by any Law whatsoever, was drawn with more than Six Horses, contrary to the Statute in that Case made and provided; by Reason whereof, one Horse being above Six in the said Waggon drawing it in Manner as aforesaid, with all Geers, Bridles, Halters and Accoutrements, were then and there seized by the said C. D. as forfeited, and were delivered by him to the Constable of, &c. aforesaid, that being the next Parish where such Seizure was made: Now I do hereby command you the said Constable of, &c. forthwith to deliver the said Horse, and other the forfeited Things  
unto

## Highways.

unto the said C. D. who first seised the same, to and for his sole Use and Benefit, paying unto the said Constable Ten Shillings for keeping and securing the same for two Days Given under my Hand, &c.

### A Warrant to levy 10*l.* upon the Goods of the Person who obstructed the Seizure.

(a) Or rescue it in using Violence to the Seisor, as the Case is.

**W**Hereas on the Day of the Date hereof, it was duly proved before me, upon the Oath of C. D. of, &c. that L. M. of C. in the County aforesaid, did on the, &c. Day of, &c. in the Parish of, &c. aforesaid, with Force and endeavour to (a) hinder the said C. D. in seising or carrying away one Horse, being above six Horses, then and there drawing a Waggon travelling on the Road for Hire, contrary to the Statute in that Case made and provided, by Reason whereof the said Horse, with Geers, Bridles, Harness and Accoutrements, were forfeited to the said C. D. who first endeavoured to seise the same, but was hindered by the said L. M. as aforesaid: These are therefore to require you forthwith to levy the Sum of Ten Pounds upon the Goods and Chattels of the said L. M. by Distress and Sale thereof, in Case the said Sum of Ten Pounds be not paid to you within three Days next after such Distress is taken, and that you render the Overplus to the Owner, the Charge of distraining and selling the said Goods being first deducted Given, &c.

Besides the Payment of this Ten Pounds, he must likewise be committed for three Months.

### The Form of the *Mittimus*.

Recite the Warrant afore-mentioned 'till you come to:

*These are therefore to require you to apprehend the said C. D. and to convey him to the Common Gaol at C. for the said County, and to deliver him to the Keeper thereof, who is hereby required to receive the Body of the said C. D. and to keep him in the said Gaol without Bail, for the Space of three Months next ensuing. Given, &c.*

## An Indictment for stopping up and obstructing an Highway.

Essex, ss. **T**HE Jurors, &c. do present, that whereas Lutw. 490.  
*Time out of Mind it hath been usual, that*  
 the Liege People of our Sovereign Lord the King have had  
 and lawfully used a certain common Highway at N. in the  
 County of Essex aforesaid, in a certain Place there called  
 —, leading from the Vill of H. to the Park of L. in  
 the County aforesaid, for themselves and their Cattle, with-  
 out any Obstruction or Delay, by any Ditches, Hedges, or  
 other Obstacles whatsoever; nevertheless W. A. of H.  
 aforesaid, in the County aforesaid, 23. Day of March, in  
 the Eighth Year of the Reign, &c. dug and erected a Ditch  
 and Quickset-Hedge at H. aforesaid, in the said Place,  
 upon the King's common Highway, to the great Obstruction  
 and Delay of the Liege People of our said Sovereign Lord  
 the King passing thro' that way, and now keeps up the said  
 Ditch and Hedge, so dug and erected as aforesaid, against  
 the Peace of our said Sovereign Lord the King, his Crown  
 and Dignity, &c.

## An Indictment for not repairing a Highway.

Essex, ss. **T**HE Jurors, &c. do present, that on the  
 Twenty-third of March, in the Eighth  
 Year of the Reign, &c. there was and now is a common  
 Royal Highway in the Parish of H. in the County aforesaid,  
 containing in Length two Rod, and one Rod in  
 Breadth, was and now is in great Decay for want of Re-  
 pairs and Amendments thereof, so that the Liege People of  
 our said Sovereign Lord the King passing by and through  
 that Way could not pass without great Danger, to the  
 great Damage and common Nuisance of all the Liege People,  
 Subjects of our said Sovereign Lord the King passing by that  
 Way, and that R. B. of H. aforesaid, Gent. ought to  
 repair the said Way, when and as often as need should re-  
 quire, by Reason of the Tenure of his Lands and Tenements  
 there near adjoining, &c.

An



## An Indictment for a Nuisance in the Highway.

Essex, ss. **T**HE Jurors, &c. do present, that R. C. of H. in the County aforesaid, Butcher, on the 7th Day of January, in the Ninth Year of the Reign of our Sovereign Lord, &c. and at divers Days and Times as well before as after at H. aforesaid, in the said County, in a certain Place there near the publick Street, called B. and also near several Dwelling-houses of several Lige People, Subjects of our said Sovereign Lord the King dwelling there, put and placed a great Quantity, of Mud, Earths and other Filthiness, by Reason whereof, and by the unwholsome Smells and Stinks arising therefrom, the Air during all that Time became Corrupted and Infected, to the common Nuisance of all the Lige Subjects of our said Sovereign Lord the King, passing by, in, and thro' the Way aforesaid, to the ill Example of all other such like Offenders, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

Turnpikes are now grown very frequent, especially in *Middlesex*; and in most of the Acts for establishing them there is a Clause, that if any Person shall drive any Horse, Sheep, or other Cattle, thro' any Grounds adjoining to the Ways, whereby the Toll shall be avoided, being convicted thereof, on Oath before one or more Justices of the Peace for the County, he shall forfeit 10s. leviable by Distress.

The Punishment of those who destroy Turnpikes, &c.

By an Act made 1 G. 2. If any Person, either by Day or Night, wilfully and maliciously break down or otherwise destroy any Turnpike, Gate, or any Posts or Railings, Walls or other Fences erected to prevent Passengers from passing by without paying Toll, he shall, being lawfully convicted thereof, on Oath of one or more Witnesses, before any two Justices of the Place, or before the Justice in open Sessions, be sent to the common Gaol, or House of Correction, to be kept to hard Labour for three Months without Bail; and the Justices shall order, that the Offender shall be, by the Master of the Gaol or House of Correction, on the first Market-Day, once publicly whipped in such City, Town, &c. near which the Offence shall be committed, between the Hours of Eleven and Two.

If any Person commit the said Offences a second Time, wilfully and maliciously break down any Lock, Sluice or Floodgate, erected by Authority of Parliament, for preserving the Navigation of any River, and shall lawfully be convicted of the same, upon Indictment before his Majesty's Justices of Assize for the County where the Offence shall be committed, he shall be adjudged a Felon, and shall be transported for Seven Years.

Of those who do it a second Time, &c.

If any Action be brought against any Person for any Thing done in Pursuance of this Act, the Action shall be commenced within six Months after the Fact committed, and shall be laid in such County where the Cause of the Action shall arise; and the Defendant may plead the general Issue, and give this Act and the special Matter in Evidence, and on a Verdict, &c. shall recover treble Costs.

Action must be laid in proper County, &c.

This Act shall be publickly read at every Quarter-sessions, and at every Leet or Law-Day during the Continuance thereof; and shall be in Force for the Term of five Years, and from thence to the End of the then next Session of Parliament, and no longer.

But now by a Stat. made 5 Geo. 2. 'tis enacted, that if any Person or Persons whatsoever, shall, either by Day or Night, wilfully and maliciously break down, cut down, knock up, throw down, level, or otherwise destroy any Turnpike Gate, or any Post, Rail, Wall or other Fence belonging to any such Turnpike Gate, erected, or to be erected, to prevent Passengers from passing by without paying the Toll directed to be paid, by any Act of Parliament already made, or hereafter to be made for that Purpose, and shall be lawfully convicted of the same upon Indictment, before any of his Majesty's Justices of Assize, Oyer and Terminer, and general Gaol-Delivery for the County, City, Town, Borough, or Corporation where such Offence shall be committed, every Person so offending, and thereof lawfully convicted, shall be adjudged guilty of Felony; and the Courts, before whom such Felon shall be tried, shall have Power and Authority to transport such Felons for seven Years, as other Felons are directed to be transported.

And if they return before the Expiration of the said seven Years, contrary to the Meaning of this Act, or of the Act passed in the first Year of King George II. they so returning shall suffer Death, as Felons, without Benefit of Clergy.

And if the Commissioners and Trustees, appointed to execute any Act of Parliament for the Repair of any Highway in Execution, shall cause to be erected or continued, any Gate or Turnpike, where they have not any Power

by any Act of Parliament to erect such Gate or Turnpike, it shall be lawful for the Justices of the Peace of the County where any such Gate or Turnpike are, or shall be erected, or continued in their General Quarter-Sessions assembled, upon Complaint of any such Abuse or Excess of Power in such Commissioners or Trustees, in a summary Way to hear and determine the same; and thereupon to order the Sheriff of the County, (who is thereby authorized and required to execute such Order) to remove any such Gate or Gates, Turnpike or Turnpikes.

This Act, and also the said Act of 1 Geo. 2. cap. 19. shall continue, and be in full Force for five Years, from the 24th of *June*, 1732. and from thence to the End of the then next Session of Parliament, and no longer.

Whereas an Act of Parliament passed in the first Year of his present Majesty's Reign, for punishing such Persons as should wilfully and maliciously pull down or destroy Turnpikes for repairing Highways, or Locks or other Works erected by Authority of Parliament for making Rivers navigable; and in the fifth Year of his present Majesty's Reign, another Act passed to explain, amend, and render more effectual the said Act. And whereas the Provisions made by the said Act for punishing such Offenders have, by Experience, been found to be insufficient; now for rendering the said Acts more effectual, it is enacted, by the Statute of 8 Geo. 2. That if any Person whatsoever, after the 15 *May*, 1735. shall either by Day or Night, wilfully or maliciously pull down, cut down, pluck up, throw down, level, or otherwise destroy any Turnpike, Gate, Posts, Rails, or Walls, or any Chain, Bar, or Fences belonging to any Turnpike, Gate, or any other Chain, Bar or Fence of any Kind whatsoever, set up or erected, or hereafter to be set up or erected, to prevent Passengers from passing by without paying any Toll, laid and directed to be paid by any Acts of Parliament already made or hereafter to be made for that Purpose, or any Houses erected, or to be erected for the Use of any Turnpike Gate or Fence

After the 15 May 1735. any Person destroying any Turnpike, &c. lawfully convicted shall suffer Death without Benefit of the Clergy.



Fences, Lock, Sluice, Floodgate, or other Works in any navigable River, erected or to be erected, or forcibly rescue any Persons being lawfully in Custody of an Officer or other Person, for any of the Offences before mentioned; that then every Person so offending, being thereof lawfully convicted, shall be adjudged guilty of Felony, and shall suffer Death as in Cases of Felony, without Benefit of Clergy.

If any Person, after the said 15 May, shall wilfully and maliciously draw up any Flood-gates fixed, or made in any Wears or Locks, erected or made, or hereafter to be erected or made in or upon any navigable River for preserving the Navigation thereof; every Person so offending, being thereof lawfully convicted upon the Oath of one or more credible Witnesses, before two or more Justices of the Peace for the County, Riding, or Division, where any such Offence shall be committed, or of the adjacent County, Riding, or Division, shall be sent to the House of Correction, there to continue and be kept to hard Labour for the Space of one Month.

Any Person after 15 May 1735. drawing up any Flood-gates, &c. erected for the Preservation of the Navigation of any River, lawfully convicted, to be sent to the House of Correction for one Month.

The Offences to be tried in an adjacent County, but the Conviction not to work the Corruption of Blood, &c. an Offender becoming an Evidence to be pardoned.

Offences where to be tried, &c.

The Inhabitants to make Satisfaction to the Commissioners of the Turnpikes, to be recovered by Action or Information, &c. at the Suit of the Clerk of the Peace, &c. but if the Offender be convicted, the Inhabitants to be repaid out of the Toll. The Suit not to be abated by the Death of the Clerk of the Peace.

Inhabitants to make the Commissioners Satisfaction, but to be repaid, if the Offender be convicted.

Information to be made within six Days, and the Action to be brought within six Months.

Information in six Days. and Action to be brought in six Months.

If any Person shall assault any Collector of the Toll, or threaten him in the Execution of his Office, or shall forcibly pass through any Turnpike Gate, Rail, Chain or other Fence, set up, or to be set up, by Authority of Parliament, without paying the Toll appointed to be paid at such Gate, or other Fence, or if any Person shall forcibly carry away or detain any Collector of the Toll, so as he shall not be able to return to his Duty for the

Space

Affaulting, &c.  
the Collector;  
Penalty for the  
first Offence 5*l*.  
for second or  
third Offence  
10*l*.

The Collector  
may detain Of-  
fenders.

Constables,  
&c. refusing to  
assist forfeit 5*l*.

Persons ag-  
grieved may  
appeal to the  
Quarter-Ses-  
sions.

No Certiorari  
allow'd.

This Act in  
Force for five  
Years, and to  
the End of the  
then next Ses-  
sion of Parlia-  
ment.

1 Geo. 2. c. 23.

One Witness,  
Two Justices,  
or Sessions.

Space of three Days, the Party so offending, upon Con-  
viction by Oath of one or more credible Witnesses, be-  
fore two or more Justices of the Peace of the County,  
Liberty, or Division, where such Offence shall be com-  
mitted, inhabiting near the said Division or Place, shall  
for the first Offence forfeit 5*l*. and for want of Di-  
stres shall suffer six Months Imprisonment; for the se-  
cond or third Offence shall forfeit 10*l*. and for want of  
Distres shall suffer twelve Months Imprisonment, and before  
he is discharged to give Security at the next Quarter-Ses-  
sions for his good Behaviour for seven Years. The Col-  
lector has Power to detain the Person of Offenders. The  
Constable or Constables refusing to execute Warrants, or  
Persons refusing to assist him forfeit 5*l*. to be levied by  
Distres. The Penalties and Forfeitures to be paid to such  
Person as the Commissioners, or any five or more of them  
shall appoint. The Persons aggrieved have Liberty to ap-  
peal to the Quarter-Sessions. No *Certiorari* to be granted.  
The Judgment of the Quarter-Sessions to be final. Liberty  
to plead the general Issue. This Act and the two Acts of  
the 1 and 5 of Geo. 2. to continue for five Years, and to  
the End of the then next Session of Parliament.

### A Warrant to send a Person to the House of Correction for breaking down the Gate of a Turnpike.

*Berks, ss.* **W** Hereas it hath been duly proved before us  
J. S. and J. B. Esqrs; two of his Majesty's  
Justices of the Peace for the County aforesaid; by the Oaths of  
E. F. and G. H. that J. K. of B. aforesaid, did on Wed-  
nesday last, wilfully, maliciously, and violently cut, break  
down, and lay open the large bolted Gate belonging to the Turn-  
pike within the Parish and Highway of B. aforesaid, so that  
Passengers might pass by the said Turnpike without paying any  
Toll, in great Contempt of the Act of Parliament made for  
repairing the said Ways, and erecting the said Turnpike: The  
are therefore, in His Majesty's Name, to require and authorize  
you to convey the said J. K. to the said House of Correction,  
and to deliver him to the Keeper thereof: And you the said  
Keeper are hereby required to take the said J. K. into your Car-  
stody, and him safely to keep at hard Labour for the Space of  
three Months: And you the said Keeper are hereby further re-  
quired on Wednesday next, to deliver the said J. K. to the  
Constable of the Town of B. aforesaid, who is commanded to  
strip the said J. K. from the Waist upwards, and to whip-  
or cause to be whipped publickly in the Market-place of the  
said Town, between the Hours of Eleven and One of the  
Clock

Clock of the *aforesaid* Day. Given under our Hands and Seals, &c.

## A Warrant against a Person for letting Horses thro' Grounds to avoid the Toll.

**W** Hereas C. D. of, &c. was this Day legally convicted by the Oaths of, &c. of driving several Horses thro' certain Grounds adjoining to the Highway leading to Hampstead, to avoid the Payment of the Toll that is due by Statute from all Persons passing the said Highway contrary to the Statute *aforesaid*: These are therefore in His Majesty's Name to require you to levy the Sum of 10s. on the said C. D. by Distress and Sale of his Goods, for the Offence *aforesaid*. Given, &c. 8 G. 1. c. 30.

## An Appointment of a Receiver of Toll at a Turnpike.

At the General Quarter-Sessions of the Peace held at, &c. on, &c.

**W** E whose Names are hereunto subscrib'd and Seals affixed, being Justices of the Peace for the County of, &c. *aforesaid*, do (by Virtue of an Act of Parliament made and passed, &c.) hereby appoint C. D. of, &c. Receiver and Collector of the Toll, (for the Year ensuing) ordered by the said Statute to be paid for all Horses, Coaches, Waggon, Carts, Cattle, Sheep, &c. at the Turnpike erected on the Highway, leading, &c. for the Reparation of the said Way, being 1d. for every Horse, 1s. for every Coach, &c. and if any Person shall refuse to pay the said Toll, the said C. D. is hereby appointed to distrain and detain any Horse, Coach, &c. until the same, and the Charge of Distress shall be fully satisfied and paid, and the said Toll so from Time to Time received the said C. D. is to pay to, &c. Surveyor of the said Roads, and to account for the same to us, or some other Justices of the Peace of this County, when thereunto required. Given, &c.



## An Adjudication of Justices when Roads are repaired by a Turnpike.

At the General Quarter-Sessions of the Peace  
held at, &c. on, &c.

8 G. 1. c. 30.

**W** Hereas the Justices of the Peace for the County of Middlesex, have Power and Authority by Act of Parliament made and pass'd, &c. to adjudge and determine when the Highways leading to, &c. are sufficiently repaired and amended, whereupon the Tolls therefore appointed on Payment of the Money borrow'd on the Credit of the Act, with the Interest, and the Charges of Passing the same are to cease: We the under-written Justices do, by Virtue of the said Power; and on due Certificate thereof, hereby adjudge, that the said Highways leading to, &c. are sufficiently amended and repaired as they ought to be; and that the said Toll ought immediately to cease and determine upon paying of the Money borrow'd on the said Act, with the Interest. Given, &c.

## Homicide.

**H**omicide, *quasi* (*Hominiæ cædes*) in the general Sense of the Word signifies every sort of killing a Man, and may be divided into,

1. Casual Death.
  2. Chance-Medley, or *per infortunium*.
  3. In Execution of Justice.
  4. *Ex necessitate* in Defence of a Man's Person, House or Goods, &c.
  5. Manslaughter.
  6. Murder.
  7. *Felo de se*, or Self-Murder.
- Of all which in their Order.

## First, Casual Death.

Casual Death is when a Man is slain otherwise than by the Hands of another, as by the Fall of a House or Tree upon him, or from a Horse or Cart, &c. or by a Bull, Dog, or other Beast, &c. but tho' a Man be slain in such Manner, yet if it be by the Means or Procurement, or wilful Default of another Man, this is Felony in the Party procuring or causing it.

'Tis the proper Office of a Coroner to enquire of such Death, which he is to do by Jury, &c.

Any thing which is the Cause of such Death is a *Deodand*, and is forfeited to the King, but not 'till found by Matter of Record; and this Forfeiture shall have Relation from the Time of the Stroke given, so that if the Owner sell the Goods after that Time, and before the Inquisition taken, the Property is not bound by such Sale, but the King shall be intitled to it.

After the Thing, which is the Cause of such casual Death, shall be forfeited to the King, praised and taken for a *Deodand*, &c. the Price of the Thing shall be distributed in Alms to the Poor by the King's Almoner; but the Almoner hath no Interest in such Goods, but hath only the Disposition of the King's Alms, *durante beneplacito*, so that the King may grant them to any other. For the Office and Duty of the Almoner, see Co. 9. 4.

And since *Deodands* are not forfeited until the Matter be found of Record, therefore they cannot be claimed by Prescription. Co. 5. 110.

The Jury, which find the Death of the Man, must also find and appraise the *Deodand*, and the Sheriff shall be charged with such Price, and shall levy the same of the Town where it falleth, altho' it were not committed to the Town to keep. See the *Stat. de Officio Coronat.* 4 Ed. 1.

All Goods which do cause, or are Occasion of the Death of a Man, by Misadventure, are *Deodands*. Co. 5. 110.

If a Man killeth another with my Sword (or other Weapon of mine) my Weapon shall be forfeited as a *Deodand*.

A Man kill'd by a Bell, the Bell is no *Deodand*. Leon. 136.

A Cart met a Waggon loaded, and endeavouring to avoid it drove up a Bank and overturned, and threw the

Man out of the Cart before the Wheels of the Waggon, which run over him and killed him ; and it was held that both the Waggon, Loading, and all the Horses, and also the Cart were *Deodands*.

A Horse threw a Man in a River, and the Stream carried him to the Wheel of a Mill, which killed him ; both the Horse and Wheel were forfeited ; but if he had been thrown from his Horse by the Violence of the Stream the Horse had not been forfeited.

Two Men riding over the *Trent* were drowned by the Violence of the Stream, their Horses were not *Deodands* because the Men were drowned by the Violence of the Stream, and not carried out of their Depth by their Horses. *2 Roll. Rep. 33. 2 Cro. 483. Poph. 136. See the Lord Almoner's Office in distributing them. 9 Co. 4.*

## Secondly, *Chance-Medley* ; Or, per Infortunium.

Chance-Medley, or per Infortunium.

**C**hance-Medley is where a Man is killed by another casually, when he is doing any Thing which is lawful, and without any Intent to hurt ; as shooting a Bird which is a lawful Act, and killing a Man the Father or Master correcting a Son or Servant, and Death ensuing.

The Forfeiture.

And by Stat. of *Marlbridge 52 H. 3. c. 25.* the Killing a Man by Misfortune or Misadventure only, shall not be adjudg'd Murder. So that by our Law now, this is no Felony, neither shall he have Judgment of Death ; but he shall have his Pardon of Course for his Life and his Lands, yet he shall forfeit his Goods in regard a Subject is killed by his Means.

Cases of  
Chance-Medley.

If a Carpenter, Mason, &c. are building a House some Distance from the Highway, and do throw or let fall a Stone, Tile, or Piece of Timber from the House and other Thing from a Cart, &c. (and giveth Warning thereof) and another is killed thereby against his Will, this is *Chance-Medley*, or *per Infortunium* ; for he was doing nothing but what was lawful and usual to be done, and he could have no ill Intention because he gave Notice what he was about to do. But if this had been in *London* Streets, or other Places of great Resort, it had been *Manslaughter*, because of the continual Passing of the People



for in such Case it shall be presumed that his Intention was to do Mischief.

In this Case the Special Matter must be found, that the Court may judge whether the Killing was *per infortunium*, and therefore 'tis not sufficient to find it generally. The Special Matter must be found.

The Method of taking out the Pardon was anciently by *Certiorari* out of *Chancery* to remove the Record; which being certified, the Lord *Chancellor* issued forth a Pardon; but now 'tis done by Certificate of the Judge or Justices, &c. whereupon is issued the following Writ. The Method of taking out the Pardon.

## The Form of the Writ.

**B**Ecause we have been inform'd by the Record of our faithful and beloved Sir A. B. Knt. and Sir C. D. Knt. our Justices assigned to deliver the Gaol in the County of Essex, that D. M. taken and detained in the Gaol aforesaid, for the Death of J. S. whereof he is indicted, kill'd the said J. S. by Accident; whereupon the said D. M. is remanded to our said Gaol, there to wait our Favour, we being moved with Pity, do pardon the said D. M. the Suit of our Peace, which belongs to us, for the Death of the said J. S. and thereupon we grant our lasting Peace to him, so that notwithstanding he may stand right in our Court, if any one will speak against him for the Death aforesaid. In Witness whereof, &c.

## Thirdly, Homicide in Execution of Justice.

**I**T must be by a proper and lawful Officer, as the Sheriff, not by a Stranger, for then 'tis Felony. Homicide in Execution of Justice.

The Judgment must be given by one who had a proper Jurisdiction to try the Cause. For if a Justice of Peace give Judgment in Treason, the Execution is Murder, both in him and in the Officer; if in Trespass he give Judgment of Death; 'tis Felony in him, but not in the Officer.

The Execution must be pursuant to the Judgment regularly, tho' in some Cases it has been otherwise, as *vide postea* in Title Judgment.

So if a Felon assault a Gaoler, or Escape, and the Gaoler pursues him, and he refuses to surrender, and the Gaoler kills him; but otherwise it is in Case the Imprisonment were for Debt. *2 Roll's Rep.*

So if a Felon by Resistance or Flight cannot be taken without killing, he who kills him must be acquitted without Forfeiture of Goods, because every Man is warranted by Law to apprehend him; but there must be a Felony actually done, which Circumstance is not required where a Man hath a Warrant to take a Felon. *3 Inst. 221.*

An Officer in Execution of a lawful Warrant, or any legal Process against a Man who resists him, upon Not-guilty pleaded, the Special Matter must be given in Evidence? and it being found for him, he is to be acquitted without Forfeiture or Pardon. Otherwise if the Warrant be ill, as *I. S. Knight*, being a Baronet, but never knighted, so the Arrest tortious. *Cro. 372.*

But in all these Cases the Necessity must be unavoidable, and there must not be the least Colour of Malice.

#### Fourthly, *Homicide ex Necessitate*, in Defence of One's self, or House, or Goods, &c.

Homicide se  
defendendo,  
&c.

**I**S where one killeth another in the necessary Defence of him or his, and which cannot otherwise Escape.

As if I kill a Man who would kill me without Provocation, or an Offender attempting feloniously to murder or rob me, or to commit Burglary; this is justifiable in me, or any of my Servants, or Company, or any Person in the House so attempted to be broke in upon in the Night. And this being found by Verdict upon Trial, we shall be all discharged without Loss of Life, Land or Goods, or Pardon. *24 H. 8. cap. 5.* And this was justifiable even by the Common Law, though with this Difference, that he, who killed a Thief, who would have robbed him upon the Highway, should forfeit Goods; but he, who killed one who would have robbed or murdered him in his House, forfeited nothing. *Cq. 11, 82.*

Cases of it.

So if I kill a Man who sets my House on Fire.

So if a Woman killeth a Man endeavouring to ravish her.

So if against a Thief or Murderer one defend himself, and kill the other, the true Man shall never give Way to the Thief, &c. nor forfeit. 3 *Inst.* 56.

This *Homicide* not being done *felleo Animo*, but upon inevitable Necessity, admits of no Accessaries, and is no Felony, tho' voluntary.

So where the Assaulted fights, and before any mortal Blow gives back to a Hedge, &c. and then kills the other, no Felony.

So if the other come upon his Sword.

If the Assaulted falls to the Ground, the giving back is excused, no Felony.

So a Gaoler assaulted by his Prisoner, need not give back.

*Homicide* in these Cases is excusable; but it must be done only upon an inevitable Necessity, and he must give back as far as he can without endangering his own Life, and the Party retires to the Wall; for if before, 'tis Manslaughter.

If one cometh by Day or by Night to enter into my House pretending Title thereto, and to put me out of Possession, and I kill him, this is Manslaughter in me.

So if a Thief assault me, either to rob or kill me, I am not bound to flie to a Wall, no more is any Officer of Justice in the executing of his Office. *Stamf.* 14.

A Servant may justify the killing another in Defence of his Master's Person or House, if it cannot be otherwise avoided; so may he kill one that robbed and killed his Master, so that it be done presently. 21 *H.* 7. 39.

One may justify the Beating of another in the Defence of the Possession of his Goods, but not to kill him unless he be a Thief, that would have taken them from him.

If a Park-keeper, &c. kill an Offender in his Park, &c. after Hue and Cry levied and not yielded to, it is no Felony. *Cromp.* 30.

What will excuse or not in *Homicide*, and what Acts will justify or not, see *Style* 467. *Buckner's Case*.

Fifthly,



Fifthly, **Manlaughter.**

What is Man-  
laughter.

**H**itherto of *Homicide* which is not Felony ; we proceed to that which is, and which may be divided into Manlaughter, which has Clergy allow'd for the first Time, and Murder, which has none, and Self-Murder cannot.

Manlaughter is the Killing a Man upon a sudden Provocation, without Malice and in the Heat of Blood, or in doing an unlawful Action without Malice.

In Manlaughter.

1. There must be no deliberate Act, but the falling out must be sudden.

2. The Act must be unlawful, for if lawful then 'tis Chance-Medley, and it must be without an Intention of any Personal Wrong ; for if the Intent is malicious, 'tis Murder.

Cases of it.

Two Men fight, and one of them breaks his Sword, and a Stranger lends him another with which he kills his Adversary, 'tis Manlaughter in both.

Two fight and part presently, after meet and one is killed, this is one continued Affray, and therefore Manlaughter ; but if the Heat had been over, and they had met again in cool Blood, it had been Murder.

There was Malice between two, the Deceased challenges the other, who refuses to meet, but said he should go to such a Place ; the Deceased meets him, and was kill'd, this is Manlaughte. *H. P. C.* 48.

Spectators may be indicted and fined, if seeing two Fight they do not prevent Death. *Noy* 50.

Entering a House with Force, those who are turn'd out of Possession come to set it on Fire, and one within shoots and kills another without Doors, 'tis Manlaughter, because the Entry was unlawful. *H. P. C.* 56.

A Servant draws his Sword in Defence of his Master, who, if he had kill'd the other, would have been guilty of Manlaughter ; but in that Affray the Master is killed, 'tis Manlaughter in the Servant. *Sid.* 254.

A sudden Provocation and Death ensuing, doth so far extenuate the Crime, as to make it Manlaughter.

As an Husband killing another committing Adultery with his Wife. *Raym.* 112. 2 *Cro.* 296.

'Tis the same in all Cases of doing unlawful Acts without a malicious Intention to kill, *viz.* Prize-fighting by Consent, playing at Foils, throwing Stones in  
Place

Places where People pass ; shooting at Deer in another Man's Park, forcible Entry and Ejecting another, and such like are unlawful ; and if any are thereby killed, 'tis Manslaughter.

So where Bailiffs coming to serve an Execution, and the Debtor shuts the Door, which they break open, and one is killed, 'tis Manslaughter, because the Breaking the Door was unlawful.

The Offender in Manslaughter (not being within the Stat of 1 Jac. 1. c. 8.) has the Benefit of Clergy the first Time, and forfeits his Goods and Chattels.

Where a Man is found guilty of this Offence, he is seldom bail'd 'till Clergy had, tho' Mr. *Lisle* was bail'd in Mich. 8. W. 3. yet it was denied Mr. *Keat*, and therefore seems discretionary in B. R.

If one Man shall pull another by the Nose, or flip him upon the Forehead, and he who is so assaulted draws his Sword and immediately runs the other thro', this is but Manslaughter, because the Peace was first broken by the Person kill'd. *Style's Rep.* 467. *Buckner's Case*.

If a Man perceiving that another is by Force restrain'd of his Liberty, or injuriously treated, shall out of Compassion rescue him, and in the doing thereof shall kill any of those who restrain him, this is only Manslaughter, though the Person abused do not complain, or call for Assistance. *Kel. Rep.* 137. *Hopkin Hugget's Case*.

Rescue of one falsely imprison'd, and killing ensuing on it, by the Twelve Judges not Murder. *Black.* 216.

If Bailiffs come to a House to arrest a Person, and the House being lock'd, they attempt to break in, whereupon the Son of him who was to be arrested shoots and kills one of them, this is only Manslaughter. *Jones* 429.

If a Gaoler kill a Prisoner in taking him when escaped, as in Execution for Debt, Manslaughter. 1 *Roll. Rep.* 189.

Several Persons are playing at Bowls, two of them fall out, and a Third, who had no Hand in the Quarrel, in Revenge of his Friend, gave the other a Stroke with his Bowl, of which he died, this is Manslaughter only, happening on a sudden. *Co. Rep.* 12. p. 87.

Sir J. C. and his Man were playing at Foils, and the Chape of Sir J.'s Scabbard fell off unknown to him, so that upon a Thrust the Rapier went into his Man's Belly and killed him ; this was Manslaughter.

Sir

Sir John Chichester's Case. Pasch. 22 Car. 1. Aley's Rep. p. 12. p. 337.

Cases of it.

A. B. and C. were indicted upon the Stat. 1 Jac. 1. c. 8. for stabbing D. and the Indictment was that A. stabb'd him, and B. and C. were present abetting, &c. *Et contra formam Statuti*, and A. was hanged, and B. and C. respited, and afterwards admitted to their Clergy; for though the Jury ought to find them Guilty upon an Indictment of Murder at Common Law; yet in Construction of this Statute which is so penal, it shall be extended only to such as really and actually made the Thrust, and not to those who by Construction of Law only may be said to make it, the Statute being only to restrain the Rage of those as would suddenly stab another. Hill. 23 Car. 1. Aley's Rep. p. 43. Page and Harwood's Case.

Though if a Man kill another whom he catches on a sudden committing Adultery with his Wife, it be but Manslaughter; yet where the Husband being informed of the Adulterer's Familiarity with his Wife, said he would be revenged of him, and afterwards finding him in the Act kill'd him; this was held Murder by Judge Jones. Mich. 23 Car. 2. 1 Vent. 158. Maddy's Case.

J. R. found a Pistol in the Street, and shewed it to one, and they two took the Gun-stick and put down into the Pistol so low they thought it was not charged; and the Wife of J. R. standing before him, he pull'd up the Cock and the Pistol went off and kill'd the Wife, upon which he cry'd out, *Oh! I have kill'd my dear Wife!* and call'd in his Neighbours. It was holden that this was Manslaughter, and not only Chance-Medley or Misadventure. 16 Car. 2. Kelyng's Rep. p. 41. James Rampton's Case.

## Sixthly, Murder.

What is Murder.

**M**urder is the killing any Person upon Malice forethought, either exprefs or implied, the Death ensuing within a Year and a Day. H. P. C. fol. 53.

Cases of it.

Where a Servant and a Stranger conspired to rob the Mistress, and in the Night the Servant let the other into the House, and lighted him to his Mistress's Bed, where he kill'd her, though the Servant neither did or said any thing,



thing, but only held the Candle; yet this was Murder in the Stranger, and Petty Treason in the Servant. *Moor* 91. *Dyer* 128.

The Wife and her Servant conspired to kill the Husband, and appointed Time and Place, and the Servant alone in the Absence of the Wife kill'd him; this is Petty Treason in both; but if he had been kill'd by a Stranger, the Wife should be hanged, and not burnt, because she cannot be Guilty of Petit Treason, where the Principal is only Guilty of Murder.

Murder is punished by hanging the Offender.

In the Time of our *Saxon* Ancestors, there were pecuniary Compensations for killing a Man; but even then premeditated and clandestine Murders were never excused by those Payments, for they were always punished with Death.

There are several Ways of murdering a Person, besides those of downright open Violence, as by laying a sick Man in the Cold, hiding an Infant under Leaves or Moss, &c. which is afterwards destroyed by Vermin, stirring up a Dog, or any other Beast accustomed to bite or do Mischief, knowing it to be such, &c.

The Person kill'd must be *in rerum natura*; for if a Woman take Poison to destroy the Child within her, being Quick, it is not Felony, but a great Misprision, unless born, and afterwards dies by this Means.

Striking in one County, and the Person dieth in another, the Trial shall be where he died.

But Accessary in one County to a Murder done in another, when the Principal is convicted, and that is certified, may be tried in the County where Accessary.

*H. P. C. fol. 54.*

Malice is divided into Malice  $\left\{ \begin{array}{l} \text{Implied.} \\ \text{Express.} \end{array} \right.$

Where one killeth another without any Provocation, Malice implied the Law implieth, and adjudgeth it to have proceeded of plied.

Malice prepense, and therefore it is

Malice implied, where one rides into a Crowd with an unruly Horse, knowing him to be so, on Purpose to do Mischief, and Death ensues. *Moor* 754.

So by wilful Poisoning, or Throwing a Stone over a House among a Multitude of People.

So where a Man draws his Sword and attacks the first Cases of it. Man he meets; for by these and such unlawful Acts it appears plainly, that the Doer had an evil Intention of doing Hurt to some Body, though not against any Person in particular; and this implies Malice.

A Smith

## Homicide.

A Smith on a sawcy Answer from his Servant, struck him with an Iron Bar and kill'd him; so if a Parent corrects his Child, or a School-master his Scholar, with such Instruments as may probably kill them, and Death ensues, it is Murder.

So if a Smith runs a red hot Iron into his Servant's Belly, or a Parent kicks and stamps on her Child's Belly, and Death ensues; in all these Cases it is Murder, and the Law supplies the Malice in the Persons who are Guilty.

Nay, if a Man assaults another with a dangerous Weapon, and without any Provocation, it is Malice from the Nature of the Fact, which is cruel. *The Queen ver. Maugridge.*

Two were beating another in the Street, and a Stranger passing by, said it was a Shame for two Men to beat one; whereupon one of those who was beating the other, ran and stabb'd the Stranger; whereupon the two were indicted for Murder; but the Judges were of Opinion, that he which did not give the Wound could not be Guilty of his Death, either as Principal or Accessary: It is true, they were both doing an unlawful Act, but the Death of the Party did not ensue upon that Act; so he was acquitted, and the other was found Guilty; and this agreed with the Case of the King and *Thomson*, in *Keling* 61. *Trin.* 9 *Geo.* 1. at the *Old-Baily*, 9 *April*.

Poisoning of another wilfully, whereby he dieth, is and was Murder by the Common Law.

The Party poisoned must die within a Year and a Day after the receiving of the Poison.

Killing the Child in the Womb with a Poison, if quick, otherwise not Murder. 3 *Inst.* 50.

After the beating or hurting another, to make Murder, or other Homicide, the Year and the Day is reckoned from the Stroke given.

An Appeal hath relation to the Death.

Words alone, though never so opprobrious, nor any affronting Gestures, though never so reproachful, cannot be a sufficient Provocation for the killing a Man. 9 *Rep.* 67. *Cro.* 779.

But where there is a Pull by the Nose, or a Fillip with a Finger, or a Breach of the Peace, it is only Manslaughter.

If two Men fall out and give each other foul Words, and a third Person strikes one of them, and kills him, this is Murder.

So if *A.* assaults *B.* without any Provocation, and draws his Sword and runs at him, and then *B.* draws his

Sword

Sword in his own Defence, and is kill'd by *A.* it is Murder.

But if two Men fight, and another Person coming to part them killeth one of them, this is Manslaughter, because there was an actual Fighting and Striving with Violence between the other two.

If one who is wounded neglects his Cure, or lives disorderly, yet if he die of those Wounds, it is Murder or Manslaughter, as the Case shall appear upon the Evidence against the Criminal, because the Wounds were the principal Cause of the Death which ensued. *Kel.* 26.

Where a Man is stabbed without Weapon drawn, *Malice* is implied. 1 *Ja.* 1. c. 8. Cases of it.

Five Years after the making that Statute it was held, that if the Person kill'd had a Stick in his Hand, it is to be accounted a Weapon drawn.

By this Statute, stabbing another who hath not then any Weapon drawn, or who hath not first stricken, and the Person dying within six Months, this is Murder in him who stabs, and he shall not have Clergy. There is a *Proviso*, that the Act shall not extend to one who kills another *se defendendo*, or by Misfortune, nor to one who in keeping the Peace, or chastising his Servant or Child, shall unwillingly commit Manslaughter.

*Anno 9 Car.* 1. One *Byard* struck *Ward*, who struck again, and then *Byard* stabbed the other with a Knife, the Question was, Whether he should have his Clergy, because he was struck by the other before he stabbed him; and adjudged he should not, because the Words first stricken in the Statute shall be construed, the very first Stroke given by the Party slain at the Beginning of the Quarrel, and not to any Stroke before the Stab. *Jones Rep.* 348.

So where two quarrel, one throws a Pot at the other, which missing him, the other drew his Sword and kill'd him. On the Statute of Stabbing, the Question was, If he should have Clergy, and by the better Opinion it was held it should relate to the Beginning of the Quarrel: For if in fighting one lets his Sword fall, or throws it at another, and is then killed, it is plain he had not then a Weapon, *viz.* at the Time of the Wound given; but yet because it was once drawn during the Quarrel, the Prisoner shall not be excluded his Clergy. 3 *Levinz* 255. 4 *Rep.* 51. 9 *Rep.* 66.

*Anno 15 Car.* 1. *David Williams* walking on *St. David's Day* with a Leek in his Hat, was jeered by a Porter, and thereupon *Williams* took a Hammer out of *Marbury's Shop* and threw it at the Porter with Intent to hit him,



him, but he missed the Porter and struck *Marbury*, of which he died; the Question was, Whether this was within the Statute of Stabbing; for *Marbury* had no Weapon drawn; and adjudged that it was not: The Reason seems to be because he had no Anger or Displeasure against *Marbury*, and so was within the *Proviso* of the Statute, which exempts any killing by Misfortune, as this seemed to be. *Jones* 432.

But *Williams* was not indicted for Murder, but for Manslaughter, on the Statute of Stabbing; if he had been indicted for Murder, he ought to have been found Guilty, for the Provocation was not so great as to excite him to kill another. *Kelynge* 133.

It is Murder to kill a Constable or any other Peace-Officer, or any assisting them in the lawful Execution of their Office, but then they must know he was coming to keep the Peace, &c. otherwise it is but Manslaughter in him who kills him.

So in killing a Bailiff, &c. in the lawful Execution of a lawful Warrant, though he do not shew it, being demanded, and though there is a Mistake or Error in the Process; but if he execute it in an unlawful Manner, it is only Manslaughter. *Ma. c. 3.* 1 *Cro.* 132, 183. 4 *Rep.* 91. *Cro. Car.* 386, 537.

An Officer had a Warrant to arrest Sir *H. F. Knt.* but he really was a Baronet and never Knighted, and the Officer was killed in the executing this Warrant; this was held to be Manslaughter, because he had no Authority to arrest the Baronet, and so his Warrant was illegal. *Cro. Car.* 372.

All who are present and assisting a Person arrested, knowing of the Arrest, are principal Murderers, if the Officer is killed.

In 1 *Vent.* 216. There is a Case where a Collector of a Tax distrain'd a Piece of Plate in the Absence of the Master, but was hindred from going out by a Servant, upon which he beat her against a Post and kill'd her; and this was held to be Manslaughter. 1 *Vent.* 216.

Several come to rob a Park, and one kills the Keeper, it is Murder in all the others if in the same Park, though at a Distance when the Fact was done, because their Entry was unlawful, and from thence Malice will be imputed. *Palm.* 35. *Jones* 429. 2 *Roll. Rep.* 120. *Moor* 86.

One assaults another with an Intention to rob him, and being resisted kills the Person he assaulted, it is Murder.

So if a Gaoler by Famine or other hard Usage kill a Prisoner. And so is executing Marshal Law in Time of Peace.

Cases of it.

If two fight in a Tavern and are parted, and one alledgeth the Inconvenience of that Place to fight in, and they appoint another Place and fight presently, where one is kill'd, it is Murder, because Reason had so much the Mastery of his Passion as to judge of the Convenience of the Place. *Sid.* 277. 1 *Bulst.* 86. 3 *Bulst.* 171.

Yet where two Boys fought near their Father's House, and one being bloody complain'd to his Father who was then a Mile off, but he went and beat the Boy so that he died, it is not Murder. *Godb.* 182. 2 *Cro.* 296.

## 2d. Malice Express.

Malice express.

As if a Man is resolved to do an unlawful Act, as to rob an Orchard, and the Owner come to hinder it, and is killed, it is Murder in him who killeth him. 1 *Roll. Rep.* 363.

Malice between two, they fight, though the deceased give the first Stroke, it is Murder in the other. 1 *Bulst.* 86. 3 *Bulst.* 171, 172.

If the deceased challenge another who refuseth to fight, but afterwards upon Importunity meeteth and kills him; it is Murder. Cases of it.

All who are present and assisting are Principals. *Sid.* 60.

If they are not present, yet if they come to do an unlawful Act, and are in the same House or Place, though at a Distance, it is Murder in them.

In a Riot at May Fair a Constable was kill'd, and not known by whom, A. was indicted for it and acquitted, C. D. and E. were indicted as Persons present, assisting, aiding and abetting him therein; it was proved that E. first drew his Sword, and with several others assaulted the Constables, and that the Riot continued an hour or more; it was held in this Case, that upon Proof of a Murder done, E. is a Principal, for he begun the Riot, which continued till a Murder was committed, he is principal Murderer, though he did not the Fact.

A Keeper of a Park finding a Boy stealing Wood, and him to a Horse's Tail, the Horse ran away and kill'd the Boy; this was adjudged Murder, because it was a malicious and deliberate Act, though perhaps Death was not intended. *Cro. Car. Hollaway's Case* 131. *Jones* 8. *Palm.* 547.

Where there is Malice between two, and the one striking at the other killeth a third Person, it is Murder; if no Malice between them, it is Manslaughter.

Cases of it.

Malice between two, and the one assaulting the other kills his Servant coming to his Defence, Murder. *Dyer* 128.

One buys Poison to kill another, and a third Person eats it and dies, Murder. *Plowd. Com.* 437, 476. but such Mistake frees the Accessary before. *Black.* 198.

Two or more come to do an unlawful Act, one of them kills a Man, it is Murder in both, if abetting or ready to abet, though but looking on. But then the Abettor must know the malicious Design of the other, and the Killing must be in Pursuance of that unlawful Act, and not collateral to it; and it must be done deliberately; for if it is upon a sudden Affray and Death ensues, it is but Manslaughter.

Two having Malice fight, the Servant of one of them not knowing the Malice, &c. killeth the other; this is Murder in the Master, and Manslaughter in the Servant.

One commands another to kill a third Person with a Gun, he kills him not by shooting but with a Sword, it is Murder in the Person commanding.

But if by Mistake he kills another Person, it is Murder in him killing, and the Person commanding is not so much as Accessary.

If one command another only to beat a third Person and upon this Beating Death ensueth, it is Murder in the Person commanded, to which he who commanded is likewise Accessary, because Death ensued upon the unlawful Act of Beating.

Some prohibited Goods were seized at Sea, and brought to *Mansell's* House, and one *Herbert* pretending to be Deputy-Admiral came with Force to *Mansell's* House, and assaulted those who kept Possession of the Goods; a Gentlewoman came to the Door without any Weapon and she was kill'd with a Stone which was thrown by *Herbert's* Servant at another, and this was held to be Murder in *Herbert* and all his Company; for the Woman was kill'd in Defence of the House, and that makes it Murder. *Moor* 87. *Dyer* 128. b.

The Judgment in Murder must be the common and ordinary Judgment allowed by Law, but when he is dead the Body is at the King's Disposal, and therefore may be hung in Chains, though that cannot be Part of the Judgment.

Cases of it.

By the Stat. 24 H. 8. c. 5. It is enacted, That if any Person be indicted for the Death of another attempting murder, rob, or commit Burglary, and it is so found Verdict, he shall forfeit no Lands or Goods, but shall be acquitted.



A Man in the Night was breaking open the Door of a Dwelling-house, and one who was only Lodger was dissuading him from it, who thereupon broke the Window and thrust his Rapier at the Lodger, who run a Spit into the Rogue's Eye, of which Wound he died; this was held to be no Felony, but excusable by the Statute, tho' it was done by a Lodger, and not by the Master of the House in Defence of his Possession.

By a Stat. made 21 *Ja.* 1. c. 27. It is enacted, That where a Bastard Child shall be concealed, it shall be taken to be born alive; and if it is dead it shall be adjudged to be murdered; so that Concealment of the Birth of a Bastard is made the Crime. Now if a Woman is with Child of a Bastard, and going well to Bed is taken with travelling Pains in the Night, and knocks for some Body to come and assist her, but is delivered without any Help, and then puts the Child in a Trunk, and conceals it for a Day; if there was no Sign of any Hurt upon the Body of the Child; this is not Murder within that Statute, because there was no Intent to conceal it at its Birth. So that the Concealment being by the Statute made an Evidence of the Murder, the Indictment may be, *quod infantem masculum vivum parturit, qui quidem infans masculus adtunc & ibidem vivus existens natus per legem hujus Regni Angliæ spurius fuit* (*Anglice* a Bastard) and so in the ordinary Form, and conclude *contra pacem*, and not *contra formam Statuti*; for the Statute doth not make any new Offence, but declares what shall be Evidence of the Murder. *Kelynge* 32.

Where a Person is found Guilty of Murder upon the Coroner's Inquest, *B. R.* may bail him, because the Proceedings before him are upon Depositions in Writing, which may be seen by the Court; but if found Guilty by a Grand Jury, he cannot be bailed, because the Court cannot know what Evidence they had. *Lord Mohun's Case*, 9 *W.* 3.

Neither when a Bill is found *Billa vera* by the Grand Jury against a Man, shall he be bailed upon the Affidavit read of the Evidence, though it is not sufficient to convict him, because this may discourage a Prosecution.

Justices of the Peace have Authority to inquire of Murder, because it is Felony, and the Statute 10 *Edw.* 2. c. 1. empowers Justices of Peace to hear and determine Felonies.

No Words, be they what they will, as to call a Man Cases of it.

on of a Whore, or to give him the Lie, &c. are in law adjudged such a Provocation, as for one Man to kill or wound another, unless upon the Words both the

## Homicide.

Parties suddenly fight. *Kelyng's Rep.* 55. Lord Morly's Case.

When two Persons are fighting and one is killed, those who looked on, and did not use their best Endeavours to part them, may be indicted and fined. *Noy's Rep.* 50.

If a Man happen to beat a Woman with Child, and the Child when born hath Signs and Bruises in his Body receiv'd by the Battery, and afterwards the Child dies, this is Murder in him who beat the Woman; *contra* if the Child be born dead. *Gold.* 86. *Rep.* 876.

A Man goes with Malice *prepenſe* to fight with another and to kill him, and a third Person on a sudden without Malice goes to part them, and they kill the other, this is Murder in him going with Malice, and Manſlaughter in his Companion. *Plow. Com.* 100.

If there be a Conspiracy to kill a Man, but no Malice against his Servant, if the Servant be slain, the Malice against the Master shall be construed to his Servant, and the killing the Servant is Murder; adjudg'd in *Salisbury's Case.* 1 *Mar.*

It has been adjudged, that when one Man kills another, and no sudden Quarrel appears, this is Murder, and it lieth upon the Party indicted to prove the sudden Quarrel. *Kelyng's Rep.* 26.

In arguing two Men grew to angry high Words, but afterwards they subdued their Passion, and fell into other Discourse for a Space of Time, as one might reasonably suppose they might be reconciled; but some Time after they drew one upon the other and fought, whereupon one of them was kill'd, and adjudg'd Murder. See *Kel. Rep.* 36.

A Smith chid his Servant, but upon some sawcy Answer given by the Servant, he having a hot Iron in his Hand ran it into the Servant's Belly, of which he died, adjudged Murder. *Kel. Rep.* 64.

If a Man puts Poison into Drink with an Intention of Poisoning another, and sets it in a Place where he may probably come and drink it, and by Accident another comes and drinks it and dies, this has been adjudged Murder; for the Law couples the Event with the Intention and the End with the Cause. For when a Man hath Malice to one, and intending and endeavouring to kill him he killeth another Man, this is Murder, whomsoever he killeth; but preparing Ratsbane, and leaving it in proper Places to kill Rats and Mice, or other Vermin, and with no other Intent, is not Murder, though one find it shall eat thereof and die. *Trin.* 9 *Ja.* 1.

If a Woman big with Child take Poison to destroy it within her, it is not Felony, but only a great Misprision; but if the Child be born alive, and afterwards die thro' this Poison, 'tis Murder. And an Adulterer who counsell'd a Woman to kill her Infant, when it should be born, was adjudged Accessary. *Dyer* 186.

A young Woman of the Age of thirteen Years was burnt for killing her Mistress. *Trin.* 12 *Edw.* 3.

J. S. with an Intention to kill his Wife gave her a poison'd Apple, she not knowing of it gave it to her Daughter who died thereof; this is Murder in the Father, and so it had been if a Stranger had found it accidentally. *Plowd.* 474. 8 *Rep.* 44. 9 *Rep.* 81.

If an Officer, who being appointed and authorized to whip, or with a hot Iron to burn or brand, or otherwise to punish an Offender, shall do it with such Rigour in such extream manner, as that the Offender by reason and means thereof dieth, 'tis Murder.

If a Man perswades another to kill himself, and be present when he doth it, he is a Murderer.

So if a Man shall leave an Infant, or other Person who cannot go, in a Desert, or By-Place, &c. where no Person usually comes, by reason whereof such Infant, &c. dies for want of Succour, 'tis Murder.

Where Fights grow from settled Determinations and Purposes to kill, all Deaths happening by such Fights upon Challenges are Murder. *Pas.* 14. *Jac.* 1. 2 *Roll.* *Rep.* 260.

If two fight upon Malice prepens'd, and in their Fight a Stranger that would part them cometh between them, and is kill'd, this is Murder in them both. *Dyer* 128. *Pl.* 474.

N. B. That in all Cases, where a Man cometh to do any Thing unlawful; as to kill, beat, or disseize another, or to do any other Trespass, and in doing this he killeth any Man, this is Murder.

One was stealing Pears in another Man's Orchard, and the Owner came and rebuked him, and the other killed him; this was adjudged Murder. 4 *Maricæ.*

Whenever divers Persons come in one Company, (and as Confederates in the Fact) to do any unlawful Act, as to rob or beat any Man, or to commit any Riot or Affray, &c. and one of them in doing thereof killeth a Man, this is Murder in them all. So all that are present, and aiding, abetting, or comforting to another to do Murder, are principal Murderers, altho' they give never a Stroke. *Co.* 67, 112, and 11, 15.



N. B. In Murder it is not material who giveth the first Blow ; for if he who is slain gave the first Blow, yet if there were Malice prepense in the other, it is Murder in him who killeth him ; but a bare Intent to commit Murder or Felony is not punishable, unless the Act be done.

Where a Man is hurt, the Party hurt must die within a Year and a Day next after the Hurt done, or Stroke given ; but to have an Appeal, it shall have Relation to the Death and not to the Stroke ; so as the Appeal must be brought within the Year after the Death, and not after the Stroke.

In Cases of Murder the Offenders shall not have the Benefit of Clergy. *For Murder defileth the Land, and the Land cannot be cleansed of the Blood that is shed therein by Wilful Murder, but by the Blood of them who shed it.* Numb. xxxv. 31, 33.

Cases of it.

And by divers old Statutes no Charter of Pardon ought to be granted to any Person in Case of Murder or other Homicide, saving only where the King may do it by his Oath, viz. Where a Man killeth another in his own Defence, or by Misfortune. 6 Edw. 1. c. 9. 2 Edw. 3. c. 2. 4 Edw. 3. c. 13. & 14 Edw. 3. c. 15.

And by our Law at this Day a Pardon of all Felonies will not discharge Murder, except the Pardon be with a *Non Obstante*, &c. or that Murder be expressly mentioned in the Pardon. Co. 6. 13. b.

Neither will a Pardon of all Felonies discharge a Man that is attainted of Felony, except also the Attainder and the Execution be pardoned. 9 Edw. 4. 29. Co. 6. 13. b.

All the Judges of the K. B. held clearly, that Justices of Peace have Authority to enquire of Murder, because it is Felony. Pasch. 25 H. 6. Trin. 22 H. 7. Kelynge's Rep. 91. Stat. 10 Ed. 2. enables Justices of Peace to determine Felonies.

A Man may be indicted for the Murder of a Man unknown. Plowd. 85. March 129.

If Husband and Wife join in Murder, they are both equally guilty ; so resolved by all the Judges. 16 Car. 2. Kel. Rep. 31.

Cases of it.

In Case of a Bastard Child, it was agreed by the Judges, that if there be an Intent in the Mother to conceal the Child, then it is Murder by the Statute, tho in Truth the Child was dead born ; but if there was no Intent to conceal it, or if she confess her self with Child before-hand, and after she is surprized and delivered, no Body being with her, this is not within the Statute, because there was

no Intent to conceal it ; and therefore if there be no Sign of Hurt upon the Child, it is no Murder. *Kelynge's Rep.* 32.

A Woman kick'd her Child, and stamp'd upon her Belly, whereof she died, and adjudged Murder. *Kelynge's Rep.* p. 64.

A Man *Non Compos Mentis* shall not lose his Life, nor forfeit any Thing for Murder or Felony. *Mich.* 27 *H.* 7. 31 *P.* 4 *Ed.* 6. *Plow.* 19. 2 *Roll.* 324. *Co.* 4. 124. *Hob.* 134. *Plow.* 260. *Pas.* 1 *Ja.* 1. *B. R.* *Co.* 4. *Rep.* 124. *Beverley's Case.*

If one who is *Non Compos Mentis* kill a Man, this is no Felony, for he cannot have a Felonious Intent, and no Felony or Murder can be committed without a felonious Intent and Purpose ; and *actus non facit reum nisi Mens sit rea*, and a Madman is *Amens, quasi sine Mente*.

Tho' if another Man shall upon Malice procure a Madman to kill another, tho' the Madman shall be excused, yet the Inciter or Procurer shall be punished as a Principal.

An Infant of eight Years of Age, or above, may commit Murder, and be hanged for it, if it may appear (by hiding the Person slain, by excusing it, or by any other Act) that he had Knowledge of Good and Evil, and of the Peril and Danger of the Offence. *Co.* on *Lit. f.* 147. *contra* under fourteen Years of Age.

One of nine Years old kill'd one of nine Years old, and hid the Body ; adjudged Murder. *Hill.* 3 *H.* 7. *Beverley's Case.*

But if an Infant of such tender Years, as that he hath not Discretion or Intelligence, kill a Man, that is not Felony in him ; for where such Acts happen thro' involuntary Ignorance, there the Law doth not account such Act to be Felony.

But if a Man who is drunk commit Murder he shall die for it ; for a Drunkard is *Voluntarius Dæmon*, and what Hurt or Ill foever he doth, his Drunkenness doth aggravate it.

## Of Indictments for Murder.

IF several are indicted for Murder, the Jury cannot find *Billa vera* as to one, and Manslaughter in the other ; for if they find it so, a new Bill shall be preferred against those who are found guilty of Manslaughter. 3 *Bulf.* 206. 1 *Roll. Rep.* 407, 408.

The Place  
where.

If a Man is indicted for Murder they cannot find *Billa vera Se defendendo*, for that is contradictory ; and the Defendant must be indicted *de novo*. 2 Roll. Rep. 52.

The Place where the Stroke was given must be set forth in the Indictment ; and therefore it is not sufficient to say, that he assaulted the Person, and that he gave him a mortal Wound, without saying in what Place. 2 Bulst. 293.

Two Men quarrelled and fought in a Park *juxta Knowl*, and one was killed, for which the other was indicted ; but it did not set forth in what Place or County the Park was ; neither was the Word *Percussit* in the Indictment, but *dedit Vulnus* ; and for these Reasons it was quash'd.

It must be said  
felonice.

So when it was *Percussit cum gladio*, but did not say *felonice*. Cro. Eliz. 193. *ex Malitia sua præcogitata murderavit*, is good without the Word *Percussit*. Dyer 95. 5 Rep. 112. 2 Cro. 25. 1 Bulst. 109.

The Stroke was said to be *super sinistram Partem Lateris*, and did not shew in what Part, and this was held certain enough ; because 'tis well understood what is meant by the Word *Latus* ; but where it was *cum Pugione in sinistra Parte Collis percussit*, this was held ill ; for it should have been *Colli*. So where the Stroke was alledged to be given at *D.* whereof the Plaintiff died at *S.* & *sic apud D.* he killed him, this is impossible. Noy 45.

Where the Re-  
ference is to  
the Day of  
Death.

Where it was that on the 22d *Januar*, &c. *percussit* the Person at *B. dans ei Plagam mortalem*, &c. of which he died 23 *Feb.* following ; and so he murdered him *Die &c. præd.* that must refer to the Day last mentioned ; for otherwise there being two Days mentioned it would be uncertain to which it would relate, *viz.* either to the Day of the Stroke, or Death. Cro. Eliz. 739.

Indictment for Murder must expressly have *Murderavit* ; for *ex Malitia sua præcogitata & voluntarie & felonice interfecit* is not sufficient. 4 Co. 39. b. Dyer 304. but *ex Malitia sua præcogitata Murderavit* is good without *percussit*. Dyer 25. 5 Rep. 112. b. 2 Cro. 95. 1 Bulst. 109. Day on a languishing Death how to be set forth. 1 Bulst. 203. Cro. El. 739, 793.



An Indictment for Murder with a Sword.

**T**HE Jurors, &c. do present, that D. E. late of Dyer 304.

H. in the County aforesaid, Yeoman, not having the Fear of God before his Eyes, but moved and seduced by the Instigation of the Devil, on the 6th Day of August, in the eighth Year of the Reign, &c. about nine of the Clock in the Afternoon in the Night of the same Day, at H. aforesaid, in the said County, with Force and Arms in and upon one A. C. then and there being in the Peace of God and of our said Sovereign Lord the King, made an Assault, and feloniously, voluntarily, and of his Malice forethought, struck and wounded the said A. C. at H. aforesaid, in the County aforesaid, with a Sword of the Value of three Shillings, which the said D. E. then and \* there drew, had and held in his Right Hand, and feloniously and of his Malice forethought, gave the said A. C. at H. aforesaid, in the County aforesaid, a mortal Wound with the Sword aforesaid, in and upon the Right Side of his Left Pap, of the Length of three Inches, and of the Breadth of two Inches, of which said mortal Wound he the said A. C. from the said sixth Day of August, in the Year aforesaid, till the ninth Day of the same Month of August, at H. aforesaid, in the County aforesaid, lay sick and languished, on which said ninth Day of August, in the Year aforesaid, he the said A. C. at H. aforesaid, in the County aforesaid, † died of the said mortal Wound, and so the said Jurors on their Oath say, that the said D. E. on the said ninth Day of August, in the Year aforesaid, at H. aforesaid in the County aforesaid, was feloniously and wilfully of Malice forethought kill'd and ‡ murdered in the Manner and Form aforesaid, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

\* If ibidem had been omitted, the Indictment would have been ill.

† If he died presently, then say, instantly died.

‡ Murdravit doth supply ex malitia sua præcogitat. Dyer 68. contra 99. 404. Cro. Eliz. 900.

Murdravit is necessary in an Indictment, because Clergy is not allow'd for Murder.

Upon the Statute of Stabbing, 1. Ja.  
1. c. 8.

Essex, ff. **T**HE Jurors, &c. do present, that A. D. late of H. in the County aforesaid, Yeoman, not having the Fear of God before his Eyes, &c. on the sixth Day of August, in the eighth Year of the Reign, &c. with Force and Arms, &c. at H. aforesaid in the said County, in and

† These Words must be in, for he may be a Traitor, and flying, and so lawful to kill him. Godb. 64.

\* If that Word is not in, 'tis no more than Homicide. Dyer 261. a 394. b.

and upon O. N. then and there being in the † Peace of God and of our said Sovereign Lord the King, he the said O. N. not having any Weapon then drawn nor first smiting the said A. D. feloniously made an Assault, and that the said A. D. with a Sword of the Value of five Shillings, which he the said A. D. then and there had in his Hand, then and there feloniously smote and thrust into the Belly of the said O. N. he the said O. N. not having a Weapon then drawn, and not first there smiting the said A. D. and he the said A. D. at H. aforesaid, in the County aforesaid, with the said Sword gave the said mortal Wound to the said O. N. in and upon his said Belly, of the Breadth of one Inch, and of the Depth of two Inches, of which said mortal Wound the said O. N. then and there instantly died; and so the said Jurors declare upon their said Oath, that the said A. D. on the said sixth Day of August, at H. aforesaid in the County aforesaid, feloniously kill'd and \* murdered the said O. N. in the Manner and Form aforesaid, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided, &c.

### For Strangling of a Bastard Child.

Dyer 186.  
A good Precedent.

Essex, ff. **T**HE Jurors, &c. (as in the former Precedent to the Words of the Year of the King, then say) brought forth privately and secretly a Male Child, alive of her Body, which said Male Infant being born and alive, by the Laws of this Kingdom of England was a Bastard, and the said D. S. not having the Fear of God before her Eyes, but moved and seduced by the Instigation of the Devil, on the said seventh Day of August, in the Year aforesaid, and as soon as the said Infant was born, with Force and Arms at H. aforesaid, in the County aforesaid, then and there feloniously, wilfully, and of her Malice forethought, made an Assault upon the same living Male Infant, being in the Peace of God and of our said Sovereign Lord the King, and feloniously, wilfully, and of her Malice forethought, with her Hands fixed about the Neck of the said living Male Infant at H. aforesaid, in the County aforesaid, strangled, \* of which strangling the said Infant Bastard then and there instantly died, and so, &c. And moreover, the said Jurors do upon their Oath further declare, that E. M. late of H. aforesaid, in the County aforesaid, Spinster, on the 7th Day of August, in the Eighth Year of the Reign, &c. and at divers other Days and Times before the said Felony and Murder committed in the Manner and Form aforesaid, at H. aforesaid

\* If the Proposition (de) had been omitted the Indictment had been ill. 1 Roll Rep. 135.

foreſaid, in the County aforeſaid, maliciously and feloniously adviſed, procured and abetted the ſaid D. S. to commit the Murder aforeſaid, and to kill and murder the ſaid Infant, againſt the Peace, &c. And moreover, that L. M. of H. aforeſaid, in the County aforeſaid, and T. P. of the ſame Place, Spinſter, after committing the Murder and Felony aforeſaid, knowing the ſaid D. S. to have done and committed the ſaid Murder and Felony, on the ninth Day of Auguſt, in the Year aforeſaid, feloniously received the ſaid D. S. at H. aforeſaid, in the County aforeſaid, againſt the Peace, &c.

A Condition of a Recognizance to prefer a Bill of Indiſtment, and to give Evidence at the next General Gaol-Delivery, or Aſſizes, to both Juries in Caſe of Murder.

**T**HE Condition of this Recognizance is ſuch, that if the above bound W. B. do perſonally appear before her Majeſty's Juſtices of Gaol-Delivery at the next General Gaol-Delivery, to be holden for the within named County of Kent, and do then and there prefer or cauſe to be preferred a Bill of Indiſtment againſt A. B. C. D. E. F. G. H. and J. K. for the Murder of L. M. Gent. deceased, wherewith the ſaid A. B. and C. D. are charged before the within named Juſtices, and with Suspicion wherEOF the ſaid E. F. G. H. J. K. are alſo charged before the Juſtices aforeſaid, and do alſo then and there give ſuch Evidence as he knoweth concerning the Murder aforeſaid, as well to the Jurors who ſhall enquire thereof for our Sovereign Lord the King, as alſo to the Jurors who ſhall paſs upon the Trial of the ſaid A. B. C. D. E. F. G. H. J. K. or any of them, for the ſame, then this Recognizance ſhall be void, or elſe it ſhall ſtand in full Force and Virtue.

7thly, Felo de ſe,

**I**S one who committeth Felony by murdering himſelf voluntarily. Who is Felo de ſe.

The Perſon who is guilty of that Offence muſt be,

1. Of



1. Of the Age of Discretion.
2. *Compos Mentis*.
3. The Act must be voluntary.
4. Death must ensue within a Year and a Day after the Stroke or Wound, otherwise no Forfeiture of Goods is incurred.

When the Act  
is involuntary.

Yet in some Cases the Act may be involuntary; as if I am assaulted, and draw my Sword to defend myself, and happen to fall down, and the other pursuing his wicked Purpose to kill me, falls upon my Sword, and kills himself, he is *Felo de se*. Sir Fra. Bacon, 4, 5.

But if without being actually assaulted I am only in Danger thereof, and thereupon draw my Sword in my own Defence, and another runs upon my Sword, and kills himself, he is not *Felo de se*.

Conviction.

The Conviction must be by the Oath of twelve Men before the Coroner, *super Visum Corporis*; and when his Inquisition is returned and filed, 'tis not traversable. Sid. 92. 1 Vent. 278. *contra*.

If the Body cannot be found, &c. then the Enquiry may be before the Justices in the Sessions; and this is traversable. 3 Inst. 55. Hale's P. C. 29. Pasf. 43 Eliz. B. R. Co. 5. 110. Foxley's Case. 2 Car. 1. Poph. 204. 1 Roll. Rep. 17. Trin. Jac. 1. Mich. 15 Car. 1. Newcoman's Case. Roll. Abr. 96.

So if the Enquiry be in B. R. in the same County, 'tis traversable by Executor or Administrator.

The Coroner's Inquest found, that *Seipsum felonice submersus fuit*, he was order'd to attend B. R. to amend it, for it should be *jecit seipsum in Aquam*, &c. Sid. 259.

If a Presentment is made before a Coroner, that a Man was *Felo de se*, and that he had Goods in the Possession of S. this Presentment must be certified into B. R. upon which Process out of the Crown-Office issues against S. and 'tis continued till he is outlaw'd. 2 Leon. 200.

*Felo de se*, his Forfeiture of Goods in Possession is not to be set aside by a Bill of Sale before. Black. 204.

The Forfeiture.

The Forfeiture is of all Goods and Chattels, and Debts due upon Specialties, which the Party had at the Time of the Wound given; for it relates to that Time, and not to the Death.

Melius inquirendum.

A *Melius Inquirendum* is not granted but where there is a Misdemeanor in the Coroner. Vent. 182, 352.

How a Pardon operates.

In a Pardon of all Offences, &c. except Murder, a *Felo de se* is under the Exception; for to kill one's self is against the Law of Nature, and no Vengeance can be had against one who is *Felo de se*, therefore his Goods

etc. are forfeited to the King for depriving him of the Benefit of a Subject. 1 *Levinz* 8. *Dyer* 160.

All the Goods and Chattels, and Debts due upon Specialties of a *Felo de se* are forfeited to the King, but not till his Death is found by the Coroner.

A Lease for Years is made to Husband and Wife, the Husband is *Felo de se*, the Lease is forfeited. *Plow.* 258.

Debt due on Simple Contract to *Felo de se*, is not forfeited to the Crown. *Pas.* 9 *Eliz.* *Dyer* 262.

If an Infant, or a *Non Compos Mentis* kill himself, he forfeits nothing, and so a Lunatick, if the Blow, &c. (which was the Cause of his Death) be given during his Lunacy, though he die thereof when he is of sound Memory. *Stamf.* 19. *Co.* 1. 99. b. & 4. 42. *Fitz. Coron.* 244. *Pl.* 260. *Pas.* 22 *Ed.* 3. *Mich.* 4 & 5 *Eliz.* *Plow.* 260.

An Infant, or Non Compos Mentis, *Felo de se* forfeits nothing.

Their Goods are usually granted and allowed by the King to the Lord Almoner, to be disposed of as Deodands are; but their Lands are not forfeited, neither shall their Blood be corrupt. *Fitz. Coron.* 362 & 426.

How their Goods are disposed of.

The Goods of *Felo de se* cannot be claimed by Prescription, (by Lords of Liberties, &c.) but by the King's Grant. *Co.* 5. 110. 21 *H.* 7. 33.

A Man bound with two Sureties for 40*l.* to be paid at two Days by Indenture, sold them Beasts for 40*l.* paid; provided, that if he saved them harmless the Sale should be void; he failed the first Payment, and afterwards he became *Felo de se*; and the Beasts having been always in his Possession, adjudged that they were forfeited. *Dyer* 160.

A. discharges a Musket with a felonious Intent at 7. 3. and misseth him, and it breaks, and kills him who fired it, he is a *Felo de se*. *Dalt. c.* 144.

## Hops.

ONE Justice hath Power to administer an Oath to Officers to make a Charge on Hops.

Pickers or Gatherers of Hops, and others, privately conveying Hops from the Place of growing, or the Place where the same shall be put, in order to be cured, bagged, and weighed, shall forfeit 5*s.* for every Pound, to be levied by Distress and Sale; and if no Distress, the Offender.

Offender is to be committed to the House of Correction for any Time not exceeding one Month.

If any Person shall obstruct or abuse the Officer in his Duty, he shall forfeit 5 *l.* to be levied *ut supra*. Stat. 9 *Ann. c. 12.*

## Horses.

The Method  
of selling  
Horses in Mar-  
kets and Fairs:

**B**Y the Stat. of 2 & 3 *Pb. M. c. 7.* which was made to prevent Horses being stolen and sold in Stables and private Places; it is provided, That Owners of Fairs and Markets shall appoint a Toll-taker or Book-keeper, to sit in the Fair from Ten in the Morning till Sun-set, and the Toll-taker is to enter into his Book the Names and Places of Dwelling of both Buyer and Seller, and the Colour and Marks of the Horse sold, on which shall forfeit 40 *s.* as shall likewise all such Owners of Fairs, &c. for every Default of appointing Toll-takers, &c. And the Book in which the Entry is made must be delivered to the Owner or Keeper of the Fair a Day after the same is over, who is to make out and subscribe a Note of the Horses sold, on Pain of 40 *s.*

How the Pro-  
perty is alter'd,  
&c.

But the Property of stolen Horses shall not be alter'd.  
1. Unless they are rid, or stand in the open Fair one Hour.

2. All Parties to the Contract must be present with the Horse, and before the Book-keeper.

3. Their Names and Dwellings, and Colour and Marks of the Horse must be enter'd in the Book, as above.

Justices in Sessions have Power to hear and determine Offences against this Law.

And for the further Preserving the Property of stolen Horses in the Owners, another Stat. was made 31 *Elizabeth c. 12.* which enacts,

1. That no Sale shall be made in Fairs, unless the Toll-taker or Keeper know the Seller, or unless he bring some credible Person who knows him.

2. The Names, Surnames, Professions, and Dwellings of both of them, and the Price of the Horse sold must be enter'd in the Book.

3. The Book-keeper must give the Buyer a Note, of these Particulars subscribed by him, if required, paying 2 *d.* for the same.



4. He who sells an Horse, without being known to the Book-keeper, or without bringing a Voucher, and he who voucheth without knowing the Seller, and the Book-keeper making Entry without knowing either, forfeit each of them 5*l.* one Moiety to the King, the other to the Prosecutor, and the Sale is void.

And yet though the Sale be in all Circumstances pursuant to this Act, yet the Property is not bound, if the right Owner claim within six Months after it is stolen, which he must do in this Manner. Yet the Property not bound if claimed in six Months.

If the Horse is found in a Town Corporate, then he must claim him before the Mayor or chief Officer; if in the County at large, then before a Justice of Peace.

The Proof must be by two Witnesses upon Oath, within forty Days after the Horse is found, that the Property is in the Person claiming, &c. and that the Horse was stole from him within six Months next before the Claim.

Upon this Proof the Party shall have his Horse again, paying the Buyer what he must swear he gave for the same.

Accessaries both before and after the Fact are debarred from their Clergy.

Selling an Horse by a false Name maketh the Sale void. *Owen's Rep.* 27.

An Action does not lie for warranting an Horse to have both his Eyes, and he hath but one, because it is in the Buyer's Conusance. *2 Cro.* 387.

For the Preservation of a strong Breed of Horses, by 32 H. 8. c. 13. Stone-Horses above two Years old, and under fifteen Hands high, (every Hand being four Inches) shall not be put into Forests or Commons, where Mares are kept, upon Pain of forfeiting the Horse. To preserve a Breed of strong Horses.

Justices in Sessions may hear and determine Offences against this Act, and Stewards in Leets may take Presentments only, but must certify them to the next Sessions upon Pain of 40*s.*

But by Stat. 8 *Eliz.* c. 8. and 21 *Jac.* 1. c. 28. this Statute is not to extend to the Fen-Grounds in *Ely*, nor to the Counties of *Cambridge*, *Huntingdon*, *Northampton*, *Lincoln*, *Norfolk* and *Suffolk*, nor to the County of *Cornwall*, so that the Horses there kept are not under thirteen Hands.

By Stat. 22 *Car.* 2. c. 13. Any Horse may be exported, paying 5*s.* at the Custom-house.

N. B. Every Contract for any stolen Horse, &c. made out of open Fair or Market is void, though they be afterwards booked. *Dyer* 99.

## Horses. Houses of Habitation.

A Sale in a Fair or Market-Overt shall not take away the Owner's Property, where the Buyer doth know that the Property was to another Man, or where the Buyer knoweth that the Horse, or other Goods were stolen.

Also a Sale upon a Sunday, though in a Fair or Market-Overt, shall not alter the Property of the Goods.

Sale to a Pawn-broker, though in his Shop, alters no Property, it is not a Market-Overt. *Kelynge's Rep.* 50. Stat. 1 Jac. 1. c. 21.

### Indictment against an Horse-stealer and his Accessary after the Fact.

Essex, ss. **T**HE Jurors, &c. do on their Oaths present, that A. B. late of M. in the said County, Yeoman, on the Twenty-fourth Day of June, in the Eighth Year of the Reign, &c. with Force and Arms at H. aforesaid, in the County aforesaid, feloniously took and drove away a Black Gelding of the Price of Ten Pounds, of the Goods and Chattels of one S. K. then and there found, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and that J. G. late of H. aforesaid, in the County aforesaid, Labourer, knowing the said A. B. to have done and committed the said Felony at H. aforesaid, in the Manner and Form aforesaid, on the Day and Year aforesaid, feloniously received, gave Relief to, and assisted the said A. B. at H. aforesaid, in the County aforesaid, after the said Felony so as aforesaid committed by the said A. B. against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

## Houses of Habitation.

**T**HESE are privileged by the Law in many Respects, and are Castles for the Defence of the Inhabitants, and protect them from any Arrests on mesne Process at the Suit of any Subject.

A House may be defended by Force against Thieves or Robbers, and if kill'd it is not Felony.

Yet notwithstanding these Privileges, it may be broken open in these Cases following, the Person first signifying

the Cause of his Coming, and requiring the Opening the Doors, and being refused.

1. In Treason, Felony, or Suspicion thereof.
2. To apprehend one who hath dangerously wounded another, being freshly pursued.
3. When an Affray is in a House, the Constable, on his being refused Entrance, may break it open to keep the Peace.
4. Upon a Forcible Entry or Detainer found by an Inquisition.
5. To apprehend any Person upon a *Capias Utlagatum*, or Fine, or upon Process of Excommunication, or upon a Warrant of the Peace, or Good Behaviour.
6. Upon a Recovery in a Real Action, the Sheriff may break it open to deliver Possession, so to make Execution of a Stranger's Goods, the Door being shut against him, requesting to enter. 5 Co. 93. a.
7. And generally in any Case where the King is Party, or hath any Interest; for no Man's House shall protect him against the King.

A small House without Land, is a Cottage.

A House or Messuage contains the Building, Curtilage, Orchard and Garden. 1 Inst. 56. b.

By Stat. of 7 & 8 W. 3. c. 18. A Duty was laid on Houses and Window-Lights for Thirty-two Years; but by 5 Ann. c. 13. continued for ever; every Dwelling-house inhabited, except a Cottage, shall pay 2s. yearly, House having ten Windows 4s. over and above the Sum of 2s. Houses with twenty Windows 8s. over and above the 2s. Assessors by this Act to take the Oaths; Clerks to have 1d. per Pound by Warrant under two Justices Hands for the Receiver General. Two or more Justices may appoint Collectors. Those who do not pay to Church and Poor are excepted.

How Houses and Windows are taxed.

- 7 & 8 W. 3. cap. 18.
- 8 & 9 W. 3. cap. 20.
- 1 Ann. c. 13.
- 5 Ann. c. 13.
- 7 Ann. c. 13.
- 7 Ann. c. 7.
- 8 Ann. c. 4.

By a later Statute, every Dwelling-house having twenty Windows, and under thirty, to pay 10s. a Year; every Dwelling-house having thirty Windows to pay 20s. yearly, over and above what was laid on them before. Justices to be Commissioners for Duty on Houses. These new Duties granted for Thirty Years.

And every Edifice in the Universities having twenty Windows in the several Tenure of any one Person is chargeable with the Duty.

By Stat. 6 Geo. 1. c. 21. Justices of Peace within their Limits have Power to appoint two Persons in every Parish to be Collectors of the Duties on Houses, whether their Names be, or be not presented by the preceding



## Houses of Correction.

Collectors, according to the former Statutes. 6 Geo. 1. cap. 21.

And if there happen to be any Arrears of the said Duties by Reason of the Failure of any Collector, for which the Parish is answerable, the Justices are to cause the same to be re-assessed on all such Houses as are liable to the Duty, to be levied and paid to the Receiver General of the said Duties.

### An Appointment by Justices of the Peace, of Collectors of the Duties on Houses.

6 Geo. 1. c. 21. **W**E A. B. and C. D. Esqrs; two of his Majesty's Justices of the Peace for the County of, &c. do hereby appoint E. F. and G. H. of, &c. to be Collectors of the Duties on Windows in the Parish of, &c. for the Year ensuing, according to the Direction of the Statute in that Case made. And in Case any Person shall refuse to pay the said Duties to the said E. F. and G. H. we do hereby empower them to levy the same by Distress and Sale of the Goods and Chattels of the Person or Persons so refusing. Given, &c.

## Houses of Correction.

Houses of Correction to be erected.

One in every County, or the Justice forfeits 5 l.

**T**HE Stat. of 39 Eliz. c. 4. gives Power to the Justices in Sessions, for the Erecting one or more House or Houses of Correction in every County, at the Charge of the County; and for the Maintenance and Government of the same, and for the Punishment of Offenders committed hither, 39 Eliz. c. 4. this Statute first temporary was continued by 3 Car. 1. and was further reinforced by the Statute of 7 Jac. 1. c. 4. by which it is enacted, that in every County there shall be a House of Correction built with all Conveniences, for the setting of Rogues and idle People to Work, or every Justice shall forfeit 5 l. one Moiety to the Prosecutor, and the other towards building the House; and these Houses when built or purchased, shall be conveyed to Persons appointed by Justices in Sessions, in Trust to be employed,

## Houses of Correction.

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the Keeping, Employing and Correcting Persons sent thither. And Justices in Sessions are to appoint Governors or Masters of such Houses of Correction, and their Salaries, which are to be paid quarterly by the Treasurer out of the County Stock. *Ibid.*

Governors of such Houses to be appointed by the Sessions.

These Governors are to set the Persons sent on Work, and moderately to correct them by Whipping or Fettering them, if unruly, and are to yield a true Account every Quarter-Sessions of Persons committed to their Custodies; and if they suffer any to escape, the Justices may fine them at Discretion, which Fine is to be paid to the Treasurer of the County-Stock. *Ibid.*

Governors Duty, &c.

The House of Correction is for the punishing of the Poor who refuse to work, who are to be there whipped, and set to work. 2 *Bulst.* 358. As also by Warrant of two Justices, Alehouse-keepers selling Ale without License after Conviction. Persons running away, or, upon the Oath of two Witnesses, threatening so to do, and to leave their Families to the Parish; Parents of Bastard Children, Parents of poor Children enticing them from their Masters; Beggars, Hedge-breakers, Robbers of Orchards, poor Children refusing to be put Apprentices; Rogues whose Place of Birth and Settlement cannot be known; Servants running away, or being idle, or disorderly, or who being out of Service, refuse to go to Service after warned by two Justices; common Trepassers, Vagabonds, &c. and any Person who lives extravagantly having no visible Estate to support himself, may be sent to the House of Correction, and set at Work there, but not be whipped, and may be continued there until he gives the Justices Satisfaction in respect to his Living. *Sid.* 281.

Who may be sent to the House of Correction by Warrant of two Justices.

In case a Woman be delivered of a Child in the House of Correction, the Child must be sent to the Parish from which the Mother was sent. 2 *Bulst.* 358.

Rogues, Vagabonds, &c. may be sent by one Justice to the House of Correction, there to be kept to hard Labour with moderate Whipping, but shall not be chargeable to the County for any Allowance, either at their bringing in, or going out, or during their Abode there, but shall have so much Allowance as they shall deserve by their own Labour. General privy Searches shall be made in every Town, &c. for Vagabonds, &c. twice every Year, or oftner, if Occasion, by Warrant from Justices in their several Divisions. Persons so apprehended, to be carried before the Justices at their Meeting, &c. such Persons as aforesaid to be conveyed to the House of Correction, at the Charge of the Hundred.

Rogues in the House of Correction to have no more than they earn.

## Houses of Correction.

The Lord Chancellor may grant his Commission to inquire of Monies collected for the Maintenance of Houses of Correction, by 39 *Eliz. c. 4.*

A Justice hath a Discretionary Power to commit idle Persons to the House of Correction, but not to inflict a Punishment of Whipping till after Conviction. 1 *Sid. 281. Stile 27.*

The Justices in Sessions may punish or remove the Governor, according to their Discretion, for his Disregard of his Duty, per 39 *Eliz. c. 4.* and 7 *Jac. 1. c. 4.*

Justices in Corporations have like Power as Justices in Counties.

Justices in Corporate Towns have like Authority as Justices in the County.

## Mittimus of an idle and disorderly Person.

39 *El. c. 4.*  
7 *Ja. 1. c. 4.*  
Two Justices.  
Co. Inst. 730.

Essex, *ff.* **F**Orasmuch as it appeareth unto me, that A. B. of, &c. is an idle and disorderly Person, and who will not employ himself, or be employed in any best way to get a Livelibood: These are therefore in his Majesty's Name, to command you the said Constable, that you do take the said A. B. and him or her safely convey, on cause to be conveyed, to the aforesaid House of Correction, and there deliver him or her to the said Keeper of the same, there to be punished, and set on Work during the Space of &c. delivering also to the Keeper this Precept: Commanding also you the said Keeper to receive the said A. B. into your Custody, and him safely to keep until he shall be lawfully discharged, and in the mean Time to set him to Work, and to give him moderate Punishment, by whipping, allowing him also such Maintenance as he shall deserve by his Labour, and that you bring the said A. B. to the next Quarter-Sessions, &c. together with this Warrant: And hereby fail not, &c.

## A Liberate from thence.

Essex, *ff.* **W**Hereas A. B. was by Warrant from sent to the said House of Correction, and is at present in your Custody there: Now if the said A. B. in your Custody for the Cause aforesaid, and no other, I do hereby authorise and command you forthwith (on Receipt hereof) to set the said A. B. at large from your Custody for which this shall be your sufficient Warrant. Given &c.



## Hue and Cry.

**H**UE and Cry is a Pursuit of any Person after a Felony committed, and flying for the same ; and this to be made from Town to Town, and from County to County, by Horsemen and Footmen.

13 Ed. 1.  
27 Eliz.

By the Common Law, where a Felony is committed, or any Person wounded, the Party grieved, or any other in his Behalf, may resort to the Constable of the next Town, and acquaint him therewith, describing the Party, and telling him the Way he is gone ; who thereupon is to raise the Town, and to give the next Constable Notice, and he the next, and so on to the Sea-side.

Constable on  
Notice of Rob-  
bery is to raise  
Hue and Cry.

By the Statute of *Winton*, 13 Ed. 1. the whole Hundred in which a Robbery is committed, is made liable to make good the Loss, unless they apprehend one of the Robbers within forty Days, but by 27 Eliz. if one of the Robbers is taken, the Hundred is not liable.

And by 27 Eliz. cap. 13, Where Hue and Cry is made, the Inhabitants of any Hundred who shall neglect to pursue, must answer one Moiety of all such Damages as shall be recovered against the other Hundred.

But this Stat. of Ed. 1. extends only to Robberies done to the Person, for it was made for the Safety of Travellers ; and therefore if a House should be robbed in the Day-time, and the Felons escape, and Hue and Cry is made, and they are not taken, the Hundred shall not be answerable for the Reason above-mentioned. *Cro. Eliz.* 753. *Moor* 620.

The Person robbed should give Notice as soon as he can, and he usually goes to a Justice of Peace, and is examined on Oath.

Any one Justice may cause Hue and Cry to be raised when any Felony is committed, on Examination upon Oath of the Party robbed.

The Party robbed is not bound to lend his Horse to pursue the Thief, nor is he bound himself to pursue him.

If there be no Hue and Cry the Village is to be amerced. *Cro.* 179. b.

Every Hue and Cry must be made immediately after Notice, from Town to Town, from County to County, and by Horsemen and Footmen. 28 Ed. 3, cap. 11. 27 Eliz. cap. 13.

Officer on  
Hue and Cry  
ought to send  
Description,  
&c. in Writing.

The Officer of the Town where Hue and Cry is levied, ought to send the same in Writing to every Town about, with a Description of the Felon, &c. Marks of the Goods, &c. stolen, and not to the next Village only.

All Peace-Officers where Hue and Cry shall come, must search all suspected Places, and seize all suspected Persons, and carry them to some Justice to be examined.

Who are ob-  
liged to go  
with Hue and  
Cry.

All Persons above fourteen Years of Age, are obliged to follow the Hue and Cry, or they are liable to be fined and imprisoned by the Justices of Gaol-Delivery, and any Justice of Peace may bind them over by the Commission.

The Streets of *London* and *Westminster*, and other Cities, Towns, and Places, shall be deemed Highways as to Robberies.

How far a  
Town is ob-  
liged to go  
with Hue and  
Cry.

No Town is bound to pursue any farther than to the next Constable; for such a Pursuit is a good Excuse for them, if the Town be indicted at the King's Suit, for the Escape of a Felon; otherwise they might be required to go on from one End of the Kingdom to the other, which would be unreasonable and inconvenient.

*Co. 7. 7 Dyer 370.*

And that with-  
out Command  
of Constable.

When the Hue and Cry is raised, every Inhabitant capable of assisting therein ought to follow it, though he receives no Command or Notice thereof from any Officer, or any that hath Authority to demand his Aid in this Case

Since the Publication of the former Edition of this Book, the following Act hath been made relating to *Hue and Cry*, and several Qualifications are directed and appointed for the Party robbed to comply with before he can sue the Hundred, and as the Act doth by every Clause make an Alteration in the Law, we thought it proper to insert the Act as Abridged, which is as follows.

An Abstract of the Act for the Amendment of the Law relating to Actions on the Statute of *Hue and Cry*. 8 Geo. 2.

**E**nter, That after 24 June 1735. no Person shall maintain any Action against any Hundred, or take any Benefit by virtue either of the Statute of 13 Edward I. called, *The Statute of Hue and Cry*, or of 27 Eliz. intitled, *An Act for the following of Hue and Cry*, unless such Person shall, over and besides the Notice already required by the last of the said Statutes to be given of any Robbery, with as much convenient Speed as may be, after any Robbery on him or them committed, give Notice thereof to one of the Constables of the Hundred, or to some Constable, Borsholder, Headborough, or Tithingman of some Town, Parish, Village, Hamlet, or Tithing, near to the Place wherein such Robbery shall happen, or shall leave Notice in Writing of such Robbery at the Dwelling-house of such Constable, Borsholder, &c. describing, so far as the Nature and Circumstances of the Case will admit, the Felon, and the Time and Place of the Robbery; and also shall, within the Space of 20 Days next after the Robbery committed, cause publick Notice to be given thereof in the *London Gazette*, therein likewise describing, as far as the Nature and Circumstances of the Case will admit, the Felon or Felons, and the Time and Place of such Robbery, with the Goods and Effects, whereof he, she, or they were robbed; and shall also, before any such Action be commenced, go before the Chief Clerk or Secondary, or the Filazer of the County wherein such Robbery shall happen, or the Clerk of the Pleas of that Court wherein such Action is intended to be brought, or their respective Deputies, or before the Sheriff of the County wherein the Robbery shall happen, and enter into a Bond to the High Constable of the Hundred in which such Robbery shall be committed, in the penal Sum of 100*l*. with two sufficient Sureties, to be approved of by such Chief Clerk, Secondary, &c. or their respective Deputies, or the Sheriff of the said County, with Condition for securing to such High Constable (who is hereby impowered and required to enter an Appearance, and also to defend such Action, as herein after is mentioned) the due Payment of his or their Costs, after the same shall be taxed by the proper Officer, in case that the Plaintiff shall hap-

Notice to be given to one of the Constables of the Hundred, &c. or in Writing to be left at their House, describing the Felons and the Time and Circumstances of the Robbery.

Notice likewise to be given in the *Gazette* within 20 Days, &c.

Also he is to go before the Chief Clerk in the King's Bench and the Filazers of the Common Pleas, and enter into a Bond to pay the Constable his Costs, in Case the Plaintiff is Nonsum, &c.



## Hue and Cry.

pen to be nonsuited, or shall discontinue his Action, or in case that Judgment shall be given on Demurrer, or that a Verdict shall be given against him.

The Sheriff, if the Bond is taken before him, is to transmit it to the Chief Clerk, &c.

The Fees for the Bond and filing.

Hundreds not to be chargeable if the Felons taken, &c.

The Process not to be served on the Inhabitants, but on the Constable, &c.

He to give Notice at a Market-Town or in the Church if no Market-Town in the Hundred.

When any such Bond shall be entered into before the Sheriff, such Sheriff shall immediately certify the same in Writing to the Chief Clerk or Secondary of the Court of King's Bench, or his or their Deputy, or to the Filazer of that County wherein such Robbery shall be committed, or his Deputy, in case the Action be intended to be brought in the Court of Common Pleas, or, if in the Court of Exchequer, to the Clerk of the Pleas, or his Deputy; the Certificate shall be delivered, by the Party robbed, to the Chief Clerk or Secondary or his or their Deputy, &c. before any Process shall issue for the Commencement of such Suit; and such Chief Clerk, Secondary, &c. or their Deputies, or the Sheriff, shall not take any greater Fee or Reward for making such Bond than 5 s. over and above the Stamp-Duties; nor shall any Sheriff take any greater Fee or Reward for making, nor shall any such Chief Clerk, Secondary, &c. or their Deputies, take any greater Fee or Reward for receiving and filing such Certificate, than 2 s. 6 d. and such Chief Clerk, Secondary, &c. or their respective Deputies, and Sheriff, are hereby required to deliver *gratis*, on reasonable Request made, every such Bond, to be by them taken, to the High Constable to whose Use the same shall be taken.

No Hundred, or Franchise therein, shall be chargeable by virtue of the abovementioned or any other Statute, if any of the Felons, by whom such Robbery shall be committed, be apprehended within the Space of 40 Days after publick Notice given in the *London Gazette*.

No Process for Appearance in any Action to be brought upon either of the said Statutes, against any Hundred, shall be served on any Inhabitant thereof, save upon the High Constable of the Hundred wherein the Robbery shall happen, who is hereby required to cause publick Notice thereof to be given in one of the principal Market-Towns within such Hundred, on the next Market-Day after he shall be served with such Process, or if there shall happen to be no Market-Town in such Hundred, then in some Parish Church within the Hundred, immediately after Divine Service, on the *Sunday* next after his being served with such Process, and he or they are also empowered and required to enter an Appearance in the said Action, and also to defend the same in Behalf of the Inhabitants of the said Hundred; and in Case the Plaintiff in such Action shall recover and obtain Judgment, that then no Process of Execution shall be served on any particular Inhabitant

of the said Hundred or Franchise, nor on the High Constable; but the Sheriff or his Officer shall, upon the Receipt of any Writ of Execution to him directed in Pursuance of the said Judgment (instead of serving such Writ on any Inhabitant) cause the same to be produced and shewn *gratis* to Two Justices of the Peace of the County, Riding, or Division (whereof One to be of the *Quorum*) and residing in the said Hundred or near unto the same, who shall thereupon, with all convenient speed cause such Taxation or Assessment to be made, and to be levied and collected in such Manner as is prescribed by the Statute of 27 *Elizabeth*, in which Taxation and Assessment there shall be provided for and included, over and above what the Costs and Damages recovered by the Plaintiff in such Action shall amount to, all such just and necessary Expences which any High Constable of any Hundred hath been, or shall be at, in having defended any such Action, Claim being made thereto by such High Constable before the said Justices, upon due Notice being given to him by the said Justices for that Purpose; and the Sums of Money, so to be collected, shall be paid over and delivered (by the Officer appointed by the Statute 27 *Eliz.* to levy and collect the same) within Ten Days after such Collection to the Sheriff of the County wherein the Robbery shall happen, to the Use of the Plaintiff in such Action, for so much as the Costs and Damages by him recovered shall amount to, and to the Use of the said High Constable, for so much as his Expences in defending the said Action shall amount to, of which the High Constable shall give in an Account, and make due Proof upon Oath, to the Satisfaction of the said Justices, before any Taxation and Assessment shall be made for the reimbursing such High Constable (which Oath the Justices are authorized and required to administer) and shall in such Expences have no further Allowance toward paying an Attorney to defend the Action, than what such Attorney's Bill shall be taxed at by the proper Officer of that Court where such Action shall be brought, which the High Constable shall cause to be taxed for that Purpose.

Executions not to be served on the Inhabitants.

But the Money to be levied and collected as in the 27 of *Eliz.*

How the Constable is to demean himself as to the Moneys assessed.

Attorney's Bill to be taxed.

The Sheriff to pay the Money without Fees.

The Execution not to be return'd till sixty Days after the Delivery.

The Sums of Money, which shall be paid over to the Sheriff of the County, shall (upon reasonable Request made) be by him paid to the several Parties who shall be intitled to receive the same, without any Deduction, Fee, or Reward.

No Sheriff shall be required to make any Return of such Writ of Execution, as shall be issued out upon any Judgment which shall be recovered in any Action brought against any Hundred, by virtue of either of the above mentioned

## Due and Cry.

mentioned Statutes, until the Expiration of 60 Days, after the Day whereupon such Writ shall be delivered to the said Sheriff, who is to indorse, on the Back thereof, the Day on which he received the same.

**How the High Constable is to be reimbursed, if the Parry robbed be Non-suit, &c. and he and his Sureties prove Insolvent.**

If any Plaintiff in any Action to be brought against any Hundred, upon either of the Statutes above mentioned, shall be nonsuited, or shall discontinue his Action, or shall have Judgment on Demurrer given, or a Verdict pass against him, it shall be lawful for any Two Justices of the Peace (such as are herein before mentioned) upon Complaint to them made, and upon an Account given in by such High Constable, and Proof made upon Oath, of such Expences necessarily laid out (which Oath the said Justices are impowered and required to administer) to cause such Taxation and Assessment to be made, and levied and collected in such Manner as is directed by the Statute of 27 *Elizabeth*, in order to reimburse such High Constable all such Charges as he shall have necessarily expended in defending such Action; and in case it shall be made appear to the said Justices of the Peace to their Satisfaction, that such Plaintiff and also his Sureties are insolvent, so that the High Constable can have no Relief, as to such taxed Costs by him expended in such Defence (save only by the Power herein after given to the said Justices) it shall be lawful for such Two Justices of the Peace to cause a Taxation and Assessment to be made, and to be levied and collected in the same Manner as is directed by the Statute 27 *Elizabeth*, in order thereby to reimburse such High Constable such taxed Costs, as, by such Insolvency, he shall not be able to recover from the Plaintiff, or his Sureties.

**The Sums collected when to be paid, and to whom, to reimburse the High Constable.**

The several Sums of Money, which shall be rated, assessed, and collected, for the Reimbursement of the Expences necessarily sustained by any High Constable, in Defence of any Action brought against the Hundred, upon the Statutes above mentioned, in case of any Judgment given against the Plaintiff, shall be paid, within 10 Days after such Collection, unto the said Justices or One of them, to the Use of such High Constable, to whom the said Justices shall, upon Request, pay and deliver over the same.

**Where and when the Rewards are to be paid for apprehending Felons.**

Any Person who shall apprehend such Felon, within the time herein before limited, whereby the Hundred hath been actually indemnified from any such Action, shall, upon due Proof thereof, upon Oath made before Two Justices, be intitled to the Reward of 10*l*. (which Sum shall be raised upon the Hundred by a Taxation and Assessment, to be made, levied, and collected in the same Manner, as the other Sums of Money by this Act appointed



pointed to be raised upon the Hundred) and the Money so assessed, levied, and collected, shall be paid to Two such Justices of the Peace, within 10 Days next after the same shall be so levied and collected, to the Use of the Persons who shall be thereto intitled, as a Reward for having apprehended such Felon; and such Justices, on reasonable Request, shall pay and deliver the said Sum to such Persons, in such Shares and Proportions, as they shall think reasonable: Provided that such Person, so intitled, shall not be thereby rendered incapable to be a Witness in any such Action.

The Justices of the Peace, by whom such Taxations and Assessments shall be made, shall limit and appoint, at their Discretion, some certain reasonable Time, within which such Taxations and Assessments shall be levied and collected, which Time shall not exceed 30 Days; and if any such Officers, who are to levy and collect such Taxations and Assessments, shall refuse or neglect to levy and collect the same within such Time as shall be limited and appointed by the said Justices, or shall refuse or neglect to pay and deliver the Sums of Money, so levied and collected, to the said Sheriff, and also to the said Justices, in such Manner as the same in the several Cases herein before mentioned are directed respectively to be paid, within the respective Times herein before limited for such Payment, every such Officer shall, for every such Refusal or Neglect, forfeit double the Sum appointed to be by him levied and collected.

The Taxations and Assessments to be made within 30 Days.

Penalties for Refusal to levy and collect.

Every Constable, Borsholder, Headborough, or Tithingman, to whom Notice shall be given, or at whose Dwelling-house Notice of any Robbery shall be so left, and every Constable of the Hundred, and every Constable, Borsholder, Headborough, or Tithingman, of any Town, Parish, Village, Hamlet, or Tithing, within the Hundred or Franchises within the Precinct thereof, wherein such Robbery shall happen, as soon as the same shall come to his Knowledge, either by Notice from the Party or Parties robbed, or from any other Person to whom Notice shall be given thereof, pursuant to this or any other Statute, shall, with the utmost Expedition, make and cause to be made fresh Suit and Hue and Cry after the Felon or Felons by whom such Robbery shall be committed; and if any Constable, Borsholder, Headborough, or Tithingman, shall offend in the Premises, by refusing or neglecting to make, or cause to be made, such fresh Suit and Hue and Cry, every such Offender shall forfeit 5 l. for each Offence.

How fresh Pursuit and Hue and Cry is to be made.

Every Forfeiture hereby incurred shall be recovered with full Costs of Suit, and shall enure, one Moiety to His Majesty, the other Moiety to such Person as shall sue for the same.

How the Forfeitures are to be levied.

the

the same in Six Months next after such Forfeiture incurred, by Action of Debt, Bill or Information in any of the King's Courts of Record at *Westminster*, wherein no Effoign, Protection, &c. shall be allowed, nor any more than One Imparlance.

How the Parties are to plead.

In Actions brought against any Persons for any Thing done in pursuance of this or either of the aforesaid Statutes, the Defendant may plead the General Issue, and give this or the aforesaid Statutes, or either of them, and the special Matter in Evidence upon the Trial; and if the Plaintiff shall become nonsuit or discontinue the Action, or a Verdict pass against the Plaintiff, or Judgment be given against him, on Demurrer or otherwise, the Defendant shall recover full Costs, and shall have the like Remedy as Defendants have by Law in other Cases of Costs.

Action or Information to be within six Months.

No Action or Information shall be brought or exhibited but within the Space of Six Months next after the Matter or Thing done, for which the same shall be commenced or exhibited.

Inhabitants within the Hundred to be Witnesses.

In any Action already brought or to be brought, against any Hundred, on either of the aforesaid Statutes, any Person inhabiting within the said Hundred, or any Franchise thereof, shall be admitted as a Witness for or on behalf of the said Hundred, in the same Manner as if he or she were not an Inhabitant thereof, but resided in any other Hundred whatsoever.

### The Examination of a Person robbed, praying an Hue and Cry.

13 Ed. 1. c. 1.  
27 Eliz. c. 13.

Essex, *J.* **T**HE Examination of *A. B.* of *C.* in the County of *E.* taken by *T. P.* Bar. one of the Justices of the said County of *E.* on the first Day of August, Anno Dom. 1727. upon Oath.

13 Ed. 1. c. 1.  
28 Ed. 3. c. 11.  
Hob. 139.

*This Examinant deposeth and saith, That as he was riding on Monday last the first Day of June last past, from the Town of C. in the County of E. to M. in the same County, he was assaulted on the common Highway leading from one of the said Towns to the other, at, or near a Place there called F. about Two of the Clock in the Afternoon of the same Day, by two Horsemen, who there seized upon this Examinant, and carrying him out of the Road into a certain By-place adjoining, robbed him, and bound him: And this Examinant farther saith, That he is since informed that the Highway*

Highway and By-place are both in the Parish of M. afore-  
said, and within the Hundred of G. in the said County;  
and he also farther deposeth, That the said Thieves did felo-  
miously take from him, and rob him of 20l. in Money, one  
Gold Ring, &c. in all, to the Value of 50l. And this Ex-  
aminant farther saith and deposeth, That he then did not,  
nor yet doth know the Parties that committed the said Robbery,  
nor either of them.

## A Warrant for a Hue and Cry after a Felon.

Essex, ss. **W** Hereas I am credibly informed, that two <sup>13 Ed. 1. c. 1.</sup>  
Persons (here describe their Age, Colour, <sup>27 Eliz. c. 13.</sup>  
Apparel, Horses, &c.) did on the ninth Day of this Instant  
June, assault and take from R. K. of, &c. ten Pounds, &c.  
and that they are since fled for the same, and not yet appre-  
hended: These are therefore to Command you forthwith to  
make diligent Search within your Precincts for the said  
Persons, and to make Hue and Cry after them from Town  
to Town, and from County to County, and that as well by  
Horsemen as Footmen, according to Law; and that if you  
shall find them, or either of them, that then you bring them  
before some one of His Majesty's Justices of the Peace for the  
County where he or they shall be taken, to be dealt withal  
according to Law: And hereof fail not, &c.

N. B. Hue and Cry raised without Cause, is a Breach  
of the Peace; and if it be made falsely, and the Person enter  
into a House tho' with a Constable, and bind and rob the  
Master in the Night; 'tis Burglary.

## Hundred.

**B**Y the Stat of Winton, 13 Ed. 1. c. 1. the whole <sup>Where the</sup>  
Hundred in which a Robbery is committed, is liable <sup>Hundred is</sup>  
to make good the Loss, unless one of the Robbers is ap- <sup>liable.</sup>  
prehended. If it be done in the Division of two Hundreds,  
both Hundreds, and the Franchises within them.

In order to charge the Hundred, 'tis necessary, 1st, that <sup>What must be</sup>  
the Person robbed with all convenient Speed give Notice of <sup>done in order</sup>  
the Robbery, to the Persons inhabiting some House or <sup>to charge it.</sup>  
Cottage next the Place where he was robbed.

2. He



2. He must be examined upon Oath, within Twenty Days next before he brings his Action, by one Justice dwelling near the Hundred where the Robbery was done, whether he knew the Robbers or any of them; and if he did know any of them, then he must be bound by the Justices to prosecute them.

3. The Action must be brought after Forty Days, and within one Year after the Robbery committed.

Where the Hundred is not liable.

By 27 *Eliz. c. 13.* the Hundred is not liable to make good the Loss, if any of the Offenders are taken.

Seizure of Goods in the Day, and the Robbery in the Night, is within the Statute to recover against the Hundred. 1 *Sid.* 263.

The Action must be by Writ, and not by Bill, and the Parish named.

The Action against the Hundred must always be by Writ, and not by Bill. And 'tis not material in what Parish the Robbery is done, so 'tis done in the Hundred against which the Action is brought, but the Parish must be alledged in the Declaration.

Robbery must be by Day-light.

If the Robbery is committed during Day-light, which is a convenient Time for People to travel, the Hundred is chargeable; nor is it material whether 'tis done before or after Sun rising or setting, so it be light.

Hundred where Robbery is done liable.

If a Man is assaulted in one Hundred, and led into another, and there robbed, that Hundred where he is robbed is liable, because the Money was not out of his Possession in the Hundred where he was seized, *Goldf.* 86. So if a Man is assaulted in one Hundred, and pursued to another, and there robbed. *Hutt.* 125.

But if a Pack-Horse laden with Money is seized by Robbers in one Hundred and they lead him into another Hundred, and take away the Money there, the first Hundred is chargeable, because the first Seizing was a Robbery; but if the Owner himself had led the Horse into another Hundred, then that Hundred where the Money was actually taken, had been liable; because till then it was in his Possession.

If Goods are sent by a Carrier who is robbed, he must make Oath, and not the Owner. 1 *Leon.* 323.

A Servant delivered his Master's Money to a Quaker to carry home, they were both robbed, and the Servant made Oath, but the Quaker refused, and the Master brought the Action; and it was adjudged ill as to the Money which the Quaker was robbed, but the Servant alone might have maintained the Action.

Servant robbed, Master may sue.

If the Servant be robbed, the Master, tho' absent, may bring the Action. 1 *Cro.* 26. 2 *Rol. Abridgm.* 686. But in this Case the Servant must make Oath, &c. and the Master may be a Witness at the Trial, to prove the Delict.

very of the Money or Goods to the Servant, though in his own Case. *N. B. C. J. Rolle contra.*

Where a Carrier is robbed, he is liable to make Satisfaction in respect of the Reward he takes, and not because the Hundred is answerable over to him; for a Carrier was liable at Common Law. Carrier robbed liable to make Satisfaction.

A Justice of Peace is but a ministerial Officer in this Case, and therefore if he refuse to administer the Oath, &c. he is liable to an Action at the Suit of the Party grieved. *Leon. 323, 324. 1 Cro. 153.* Justice liable to an Action.

The Hundred is chargeable, if the Robbery is committed in the Day-time; and therefore if 'tis done in January after Sun-setting, or if a Highwayman compel a Waggoner in the Day-Time to drive his Waggon out of the Way, and then robs him in the Night, this shall likewise be a Robbery in the Day; because the first Seizure was a Robbery, and the Hundred in both Cases shall answer it.

*N. B.* If the Servant or Carrier, &c. be robbed, either of them must make the Oath, &c. before the Justice, and not the Owners of the Goods; and if the Servant or Carrier refuse so to do, the Owner hath no Remedy. If Servant won't swear, Master without Remedy.

If the Party sworn know any Thing of the Robbers, the Justice ought to bind him to prosecute by Indictment, or otherwise. *27 Eliz. cap. 13. S. 11.*

After Recovery, Execution of Damages may be levied on one Person, but then upon Complaint, &c. two Justices living in or near the Hundred (*Quorum unus*) may tax in Proportion the Towns, Villages, Parishes, Liberties and Hamlets of the said Hundred, to make an equal Distribution to relieve the Persons against whom the Execution was taken. *27 Eliz. c. 13.* The Method of levying the Money after Recovery.

A like Taxation for a Contribution of a Moiety out of a Hundred where any Default was in Pursuit, &c. to reimburse the Hundred where the Robbery was done, and it shall be recovered in the Name of the Clerk of the Peace (without naming his Christian or Surname) where such Robbery and Recovery was, and his Death or Removal shall not abate the Suit, and if it be recovered, &c. against one or few, &c. the same Course shall be taken as aforesaid, towards the Relief of the Person charged.

After such Taxation, the Constables and Head-boroughs of every Parish of the said Hundred, shall assess the Inhabitants according to their Abilities to pay the

the Sum taxed or laid by the Justices upon their respective Parishes.

Constables, upon Refusal of any Inhabitant to pay the Assessment, may distrain and sell, rendring the Overplus, and after it is levied, shall within ten Days deliver it to the Justices, or one of them, and the Justices must pay it to the proper Persons.

Hundred not answerable for Robberies in Houses; nor if one of the Robbers is taken.

A Robbery upon a Man in his House; whether by Day or Night, shall not charge the Hundred. *Co. 7. Rep. f. 6.*

The Apprehending of one of the Robbers discharges the Hundred, though the rest escape, but a Pursuit alone does not. *27 Eliz. c. 13.*

If the Party robbed apprehend any of the Thieves, this shall excuse the Hundred. *Dalt. c. 57.*

Nor for Robberies on the Lord's Day.

And if the Robbery be on the Lord's Day, the Hundred shall not be charged, but the Inhabitants shall make Pursuit according to *27 Eliz. c. 13.* on Forfeiture of as much Money as was lost. *29 Car. 2. c. 7.*

One of the Robbers found by Accident, the Hundred is not answerable.

The Inhabitants of a Hundred wherein a Robbery was committed, having levied Hue and Cry, find one of the Robbers within Forty Days accidentally in the Presence of a Justice of Peace, and charge him then with the Robbery: Adjudg'd that this was a Taking within the Statute, and shall excuse the Hundred. *Pasch. 27 Car. 2. 1 Vent. 118. 1 Lewinz 4. Raym. 221.* So if the Hue and Cry be made toward one Part of the County, and an Inhabitant of the Hundred apprehend one of the Robbers within another Part, this is a Taking within the Stat. *per Hale.*

One Justice may examine a Person robbed.

One Justice alone may examine Persons robbed, whether they know those who robbed them, and bind them to prosecute by Indictment. If they shall refuse, they cannot bring their Action, and recover against the Hundred.

If a Servant is robbed, the Justice ought to take the Oath of the Servant, and not of the Master. *Trin. 31 Eliz. Cro. Eliz. 142. Green's Case. 1 Leon. 323. Cro. Car. 37, 336. Bendl. Rep. 155.*

Robbery must be on the Road, &c. and not in a House.

The Robbery must be committed on some Person, and upon the Road in the Highway, or in the open Fields and not in an House. *Trin. 27 Eliz. C. B. Cro. Eliz. 753. 3 Leon. 262. Moor Rep. p. 620, 848. Co. 2. Inst. 569.* and the Robbery must be in Day-light, and not in the Night, either in the Morning before it is Day-light, or in the Evening after it is dark. *Trin. 28 Eliz. Rot. 725. 1 Leon. 57 and 218. 1 And. 158. Goldf. 51. Moor Rep. 620. Co. Lit. 7. f. 6. b. Milborn's Case.*



4 Leon. 59. Savil's Rep. 83. Cro. Eliz. 270. Mich. 3 Ja.  
 1. B. R. Cro. Ja. 106. Goldf. 70. Style's 233. Mich.  
 1 W. & M. Shower's Rep. 60. Mich. 22 Car. 2. B. R.  
 2 Keble 713.

A Justice of Peace of the County, and who inhabits in the Hundred where the Robbery is committed, may take the Examination upon the Oath of the Party robbed according to Stat. 27 Eliz. c. 13. when he is out of the County; because the Oath is taken by the Justice of Peace, not by Virtue of his Office, but as a Person appointed by the Statute for this Purpose. But in other Cases where a Justice of Peace doth a Thing by Virtue of his Office out of the County, the same is void; so it was adjudged. Pasch. 7 Car. 1. Jones's Rep. 239. Cro. Car. 211. *Heller versus The Hundred of Benhurst.*

It is not material in what Parish the Robbery is committed, but the Hundred must be certain. Owen's Rep. 7. Bucknel's Case. Goldf. 58.

C. was indicted, for that a Burglary was committed in the Night by Persons unknown, and J. S. gave Notice of it to C. being then Constable, and required him to make Hue and Cry; which he refused; and all the Court held that he was indictable, notwithstanding an Hundred shall not be charged, because it is the Constable's Duty, upon Notice given, presently to pursue. Hill. 1 Eliz. Cro. Eliz. 654. *Crouther's Case.*

A Man is slain in the Day-time out of a Town, and the Murderer doth escape, the Hundred shall be charged therewith. Dalr. 403.

He which is robbed, shall not have his Action where one of the Felons is taken; but if there be no Hue and Cry, the Village shall be amerced, though one of the Felons be taken. Cro. 179. b.

Notice given to the Inhabitants of a Village near, though out of the Hundred, or County, is good. 1 Cro. 1, 379. 7 Co. 7, 8.

Justice may take the Oath of the Party robbed out of the County.

Constable is obliged to raise Hue and Cry.

If no Hue and Cry raised, Village shall be amerced.

The Oath to be taken by a Person robbed, to ground an Action against an Hundred, August 9. 1727.

27 Eliz. c. 13.  
Hob. 140.

This must be within twenty Days before the Action brought, or else it will not lie.

Ex. ff. **T**HE Day and Year above written A. B. of C. in the County of D. Gent. came before me T. P. Bart. one of his Majesty's Justices of Peace in the said County, and made Oath, that on Monday the One and Twentieth Day of July last, about Three M m a-Clock

a-Clock in the Afternoon, the said A. B. coming from the Market-Town of E. where he dined that Day at the Sign of, &c. was, about two Miles off from the said Town, met in the Highway at the End of a Lane there called, &c. by two Horsemen, one of them being a Person about Thirty Years of Age, &c. [describing them by their Persons, Habits, Horses, &c.] which said two Horsemen set upon the Deponent, and robbed him, taking from him by Force the Sum of 50l. one Diamond Ring, Value 20l. &c. and the said A. B. being examined whether he knoweth the said Persons, or any of them which robbed him, he deposes and saith that he doth not know them, or any of them.

Jur' Die & Anno supradict' coram me J. S.

### A Warrant to assess and levy Money recovered against an Hundred for a Robbery, and levied on two Men.

Two Justices  
Quorum,  
27 Eliz. c. 13.

Essex, ff. **F**Orasmuch as one A. B. was of late robbed of 100l. in the Hundred of E. and hath a Judgment to recover the said 100l. against the same, the which hath been levied of and charged upon J. D. and R. R. two of the Inhabitants of F. within the said Hundred of E. And upon their Complaint to us thereof, we have, according to the Act of Parliament in the Case provided for the Raising of the said Money, set a Rate upon the Parishes and Places within the said Hundred of E. which Rate is hereunto subscribed and annexed: They are therefore in his Majesty's Name to require you the said High Constable to give Notice thereof to the Petty Constables and Bursholders of your Hundred: And thereupon the said Petty Constables and Bursholders are required forthwith equally to distribute and set the same Rates upon the Inhabitants of their Parishes respectively, according to the Method of rating the Poor; and the same being rated, they do demand it, and in Case of Non-payment, levy it by Distress and Sale of Goods upon every of the Inhabitants not paying respectively; and having levied and received the same, that they do forthwith bring and pay it in unto one of us, to the End that the same may be paid to the said J. D. and R. R. and that you do within ten Days next after the Date hereof, give to one of us an Account of the Execution of this Warrant. Hereof fail not at you Per Given, &c.

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The Form of the Rate above-mention'd.

A Rate made by A. B. and C. D. Esqs; two of his Majesty's Justices of the Peace, &c. for the raising of 100l. upon the Hundred of E. charged upon it, and levied upon J. D. and R. R. two of the Inhabitants, upon a Judgment had by one A. B. against the said Hundred after a Robbery.

|                  |   |   | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|------------------|---|---|-----------|-----------|-----------|
| The Parish of A. | — | — | 20        | 00        | 00        |
| The Parish of C. | — | — | 40        | 00        | 00        |
| The Parish of D. | — | — | 40        | 00        | 00        |

All in the same Hundred of E.

Hunting. See Game.

Imbezilling, &c. See Manufactures.

Indictment.

Indictment signifies in Law an Accusation by an Inquest of twelve Men or more upon their Oaths, and in *Latin* is called *Indictamentum*. *Co. Lit.* 126. *b.* A Presentment is a Declaration of the Jurors without any Bill offered before them; but an Indictment is grounded upon the Accusation of a third Person, and is drawn and ingrossed in Parchment in Form of Law, and delivered to the Grand Jury to be inquired of.

Indictment what it is.

A Presentment what it is.

A Presentment is properly that which the Jurors find and present to the Court, void of Form, but is after reduced to a formed Indictment. *Co. 2 Inst.* 739.

Indictments must be drawn with Care both as to Matter and Form; to which End, in all Indictments of Felony or Trespass it is good to say, against the Peace, or *Tantamount*.

Indictment must be drawn with Care.

But these Words (with Force and Arms,) *viz.* with Swords, &c. are not always necessary; yet it is good to use them; but in an Indictment of Forcible Entry, they are needless, because the Word *Force* implies as much; but you must conclude *contra pacem*. 2 *Crook* 32, 3 *Crook* 186.



Where Words (with Force and Arms) are necessary.

Not safe to recite the Statute at large, but only the Substance.

Six Things required in all Indictments.

In an Indictment for Treason, Murder, Felony or Trespas, the Words (with Force and Arms) are necessary; otherwise of Offences against the Peace only, as Conspiracies, Slanders, Deceits, Escapes for Debt.

In Indictments upon Statutes it is not needful nor safe to recite the Statute; for the Misrecital in the Matter, Year, Day or Place, is fatal; but it is safe to conclude it thus, *ff.* against the Form of the Statute in such Case made and provided, or of divers Statutes, &c. where there are divers Statutes that concern the Offence. 4 Co. 48. *Dyer* 363. 3 *Bulst.* 212.

But tho' the Statute need not be recited, yet the Substance and material Words of it must be fully set down. *Plowd.* 79. *Co. Lit.* 98. b.

Indictments must contain Certainty, for they cannot be supplied by Intendment. 5 Co. 120. *Plowd.* 48, 122. and therefore these Things are requisite in them.

1. The Names and Surnames both of the Parties indicted and offended, with the Addition of the Degree, Mystery and Dwelling-place, (both Town and County) of the Person indicted, if it be possible; but an Indictment against unknown Persons, or taking the Goods of a Person unknown, &c. may be good. *Plowd.* 58. b. *Lamb.* 476, 478. *Dyer* 99. *Moor* 466. But *Misnomer* shall not be made good by any *Alias dictus*.

2. The Time, *ff.* the Day and Year when the Offence was done.

3. The Place, *ff.* the Town and County where it was done, as at C. in the County of S.

4. The Name or Quality of the Things in which the Offence is done, *ff.* of dead Things, it may be Goods and Chattels, expressing them in Certainty; of living Things, Horse, Ox, &c. but not by the Name of Goods and Chattels.

5. The Value or Price of the Thing is to be set down, that the Greatness or Smallness of the Crime may appear.

6. The Manner of the Fact, and Nature of the Offence, Felony, Trespas, &c.

Indictments ought to be framed as near as may be to the Truth, though the Jury is not so strictly tied to the Form of Indictments as to the Matter of Fact.

False Latin shall not vitiate the Indictment. 5 Co. 121. as *Viginti* for *Viginti*, &c. 10 Co. 133.

But Words of Art allowed by the *Sages* of the Law, though not by Grammarians, ought to be used; for all Sciences have their *Vocabula Artis*.

Yet Words insensible, especially Words of Art falsely written, as *Murdredum* for *Murdrum*, *Burgariter* for *Burglariter*, *Feloniter* for *Felonice*, &c. (being not *Latin* Words, nor Words of Art) will make void an Indictment, except they be Surplufage. 4 Co. 39, 42. and 10. 133. *Quære* if they be amendable.

Words of Art  
falsly written  
will vitiare an  
Indictment.

An Indictment against four for several Offences, it ought to be *separaliter*. *Palm.* 368.

One may be indicted for disobeying an Order of Sessions.

A wrong Addition, or no Addition of a Party indicted, is cured by his Appearance. 1 *Sid.* 247.

One indicted for drawing his Sword in *Westminster-Hall*, sitting the Court. *Owen* 120.

An Indictment for striking in the Church-yard. *Noy* 169.

An Indictment naught, because the Names of Things were not put in. *Noy* 41.

Indictment  
naught, be-  
cause no Place  
named till af-  
ter the Alias  
dictus.

An Indictment naught, because no Place is put until after the *Alias dictus*. *Noy* 32.

Indictment for stealing a certain Piece of Cloth *cujusdam* A. B. and did not say *de bonis & catallis ejusdem* A. B. this is naught.

Indictment is good by another Name, if the Party is known by both ; and if there is a wrong Addition or none at all ; yet if the Party appear, that Fault is cured. *Sid.* 247. *Dyer* 46. b.

1. The Name,  
Surname, and  
Addition of the  
Party indicted.

The Place of Abode is expressly required by Statute of 1 H. 5. c. 5. and this Omission is not helped by the Statute of Amendments, for 'tis excepted out of that very Act.

If there are two Villis in one Parish, the Offender must be named of such a Vill *in parochia de S.* and not of the Parish generally.

Any Certainty, by which the Year and the Day may be known, is sufficient. 2. The Year and Day.

An Offence committed before Midnight must be laid in the Indictment to be done the Day before, if after Midnight, then the Day after ; and striking one Day, and the Party dieth a Week following, the Day on which he died must be set forth.

If the Fact be laid on a Day to come, or as done at several Times, the Indictment will be quashed. But 'tis not necessary to set down the very precise Day in which the Offence was done, so that 'tis before the Offence ; for the Jury ought to find the true Day, because the Forfeiture relates to the Day found by the Verdict, and not the Day in the Indictment.

If Fact be laid  
on a Day to  
come, or on  
several Days,  
Indictment  
void.

## Indictment.

Neither is it necessary that the Jury should find the Party guilty at that very Day laid in the Indictment ; but to find the Fact as in Truth it is proved. *Keb. 16.*

In Cases of Omission, *viz.* for not doing what we ought to do, 'tis not necessary to set down the Day and the Year.

## 3. Place.

If the County is named in the Margin, 'tis well enough, but if no Town is named where the Fact was done, or any Place, and in Truth there is no such to be found, the Indictment is void. *1 H. 5. c. 1. 18 H. 6. c. 12.*

The Defendant was outlawed upon an Indictment for Murder, which was reversed, because it did not set forth any Place where the Murder was done, but only where the Assault was, and so this may be in one Place, and the Murder in another. *Dyer 69.*

The Word *Hereford* was in the Margin, and the Indictment was, that *A. B. de R. in Com. Glamorgan*, Gent. committed the Burglary at *H. in Com. præd.* and there being two Counties named before, it was uncertain, to which the Words *Com. præd.* should refer ; and therefore quashed. *Cro. Eliz. 436.*

Where the County must be named in the Body of the Indictment and where not.

But the County must always be named in the Body of the Indictment, in Cases of Felony, but for any other Offence, 'tis sufficient in the Margin. *Cro. Eliz. 606, 751. 1 Bulst. 203. Cro. Eliz. 137.*

If the Indictment be laid in the County where the Party died, altho' the Stroke were given in another County, yet the Indictment is good, by Stat. 2 & 3 Ed. 6. c. 24. and 'tis sufficient to lay the Fact to be done in a Parish. *3 Mod. 158.*

Stat. 35 H. 8. c. 2.

By Stat. 35 H. 8. c. 2. Treasons, Felonies, Piracies, Robberies, Murders, &c. done on the Seas or beyond Sea may be tried in any Place appointed for that Purpose, by the King's Commission. *H. P. C. 204.*

Where a Robbery is committed in one County, and the Robber taken with the Goods in another County, he may be indicted for Felony in that other County ; but for the Robbery, it must be in the County where the Robbery was committed.

A. Certainty of the Person.

If the Indictment is for taking away Goods of the Church, it must say, *bona Parochianorum in Custodia Guardianorum Ecclesiæ de, &c.*

For Goods taken in the Life-Time of a Man who maketh an Executor, and dieth, it must be *de bonis Testatoris* but if taken after his Death, then 'tis *Testatoris in custodia Executorum.*



Where dead Things are stole, it is not enough to say *bona & catalla* generally, but *bona & catalla*, and then expressing the Names and Certainty thereof, is good.

5. Names and Values of the Things taken away.

When living Things are stole, the Indictment must name them, as *equum* or *oves*, &c. as the Case is, and must not say *bona & catalla*.

For Things *feræ naturæ*, as Hares, Partridges, &c. the Indictment is not good, unless they were taken in a Park or Warren, or enclosed Place, so as the Property was vested.

If the Indictment is for living Things, or for such as are sold by Weight or Measure it must be said *pretii*, &c. and yet an Indictment for taking Fishes in a Pond, was held good without setting forth the Number or Value, against the Opinion of *Twifden*. 1 *Lev.* 203. because 'tis the Value which makes it either Petty Larceny or Felony. And if the Indictment is in Trespass, then 'tis to aggravate the Fault.

Value.

But of dead Things not sold by Weight or Measure, it must be said *ad valentiam*.

Indictment for that he is *Latro* or *Pacis Perturbator*, or that he is *mali Gestus*, &c. These are all too general, and therefore not good.

6. Nature of the Offence, and with what Weapon.

But *communis Barreclator*, and concluding *contra formam Statuti*, is good, because 'tis an Offence made by a Statute. 2 *Roll. Abr.* 79.

For an Escape of a Person taken on Suspicion of Felony, you must set forth what Felony. *H. P. C.* 206.

In Escape for Felony, must set forth for what Felony.

In Treason it must be *proditorie*, and conclude, *contra ligeantiae suæ debitum*; in Murder *Murdravit*, which is *vocabulum artis*, and implies Malice; in Burglary *Burglariter*; in Rape it must be *Rapuit*; in Felony *Felonice*; for *cepit & furatus est* is not sufficient. *Cro. Eliz.* 920. 4 *Rep.* 398. 2 *Cro.* 20. *contra*, 3 *Lev.* 396. 2 *Salk.* 630, 633.

But in all these Cases, and in Trespasses, the Indictment must be *vi & armis*, and it must conclude *contra pacem*.

Where it must be *vi & armis*.

If Murder be laid to be committed with a Sword, you may give in Evidence any Weapon of the like Nature.

It will lye for a Conspiracy without setting forth, that any Act was done. 1 *Lev.* 62.

In all these Cases, if the Criminal pleads not guilty, and his Plea is recorded, yet he may withdraw it, and confess the Indictment; and then the Entry is, that *relicta verificatione cognovit Indictamentum*.

Where the Criminal after Not guilty pleaded, may withdraw his Plea.

Where after  
Acquittal one  
may be indict-  
ed again for  
the same Of-  
fence.

Where not.

Not void.

Indictment  
quash'd.

Tho' a Criminal be acquitted upon an Indictment, yet if the Indictment was void for Insufficiency, as in *Vaux's Case*, 5 *Rep.* or if the Trial was in a wrong County, yet may the Criminal be tried over again for the same Offence.

But if the Indictment is good, tho' it supposeth the same Felony done in another Year, tho' by another Name, if known by both, or tho' the Process was erroneous, yet will not another Indictment lye for the same Offence.

An Indictment is not void for false *Latin*, or for false or incongruous Words, as *viginti* for *viginti*, nor for the Omission of *Gladiis, Baculis & Cultellis*. 3 *H. 8. c. 8.*

It shall never be quash'd for false *Latin*, if by any Intendment it can be made good. *Cro. Eliz.* 108.

And yet where two Men were Indicted for that *Felonice cepit*, this was held void. 5 *Co.* 121. *Cro. Eliz.* 754.

*Contra formam Statuti*, bad to omit where no Offence at Common Law. *Saund. Rep.* 1. 249. but not bad to omit where there is an Offence at Common Law. *Sid.* 409.

So it was quash'd for saying *ad generalem Sessionem pacis*, leaving out *Domini Regis*. 1 *Lev.* 175.

So for insensible Words, as *Murdredum* for *Murdrum* because 'tis neither *Latin* nor a Word of Art.

So for leaving out *contra formam Statuti*, where the Offence is created by an Act of Parliament.

So it was quash'd for saying *Furati & Onerati dicuntur*, omitting (*super Sacramentum suum*). *Sid.* 140.

So for saying *quod per Sacram' A. B.* and the rest of the Jury, omitting *proborum & legalium hominum*. 2 *Cro.* 635. *Palm.* 282.

Indictments for any heinous Offence, as Perjury, &c. and even for Nuisances, are never quash'd upon a Motion but the Defendant must plead or demur to it.

And if there is one Indictment found by the Coroners Inquest, and another by the Grand Jury, against the same Man for the same Offence, he may be tried on both at the same Time; and this is the constant Practice.

Difference be-  
tween Indict-  
ments for Of-  
fences at Com-  
mon Law, and  
those on Sta-  
tutes.

For an Offence at Common Law, which is *contra pacem*, an Indictment will lye at Sessions. So for Fraud or Deceit, as for selling deceitful Goods, or by false Weights and Measures. And tho' there are particular Statutes relating to this Matter, yet that doth not alter the Case, for the Difference is this, That where an Offence at Common Law is made so likewise by any Statute, and a Punishment

ishment appointed by that Statute, yet the Offender is indictable, as it is an Offence at Common Law. But where a Statute creates a new Offence, and inflicts a Punishment, that must be pursued, and no other.

But 'tis not safe to recite the Statute *verbatim*, or the Beginning, Continuance, or End thereof, because any Mis-recital will make the Indictment void; but the Substance thereof and the Offence must be set forth; for the Concluding *contra formam Statuti* will not help, because these Words relate only to Circumstances, and not to any Substance. *Dyer 3, 12, 363.*

So that when an Indictment for Usury in taking more than 6l. *per Cent.* for the Loan of 100 l. and concludes *contra formam Statuti*; tho' it appeared plainly to be corrupt, yet because it was not expressly set forth, that it was by corrupt Lending, the Indictment was quash'd. *11 Rep. 58.*

The Defendant must appear and put in Bail in Per Where Defendant must appear in Person.  
son, upon a Writ of Error brought upon an Indictment, and therefore Sir *William Read*, who was 90 Years old, was brought in a Litter to *Westminster-Hall*, and upon Mens Shoulders to the Bar, to assign Errors. *2 Cro. 6, 62.*

Indictment upon a penal Statute, where the King is to have the Forfeiture, must be brought within two Years after the Offence. But where a common Person is to have it, then within a Year, except it be otherwise directed by the Statute; by Stat. 31 *Eliz. c. 5.* 33 *H. 8.* And therefore one was indicted for not baptizing his Child, and it appeared the Offence was three Years before; and the Court stayed the Indictment. *Mich. 7 Jac. 1. Stoner's Case. 13 Eliz. 5. 39 Eliz. 1. 2 Jac. 4.* Within what Time Indictments must be brought upon a Penal Statute.

*Weston* was indicted for giving Sir *Thomas Overbury* several Poisons at several Days, whereof such a Day he died, and says not of which, yet good.

One wounds a Man in *March*, and he dieth thereof on the 15th of *April*, if the Indictment concludes that he killed him in *March*, 'tis not good, but it must be, that he killed him on the 15th of *April*, but the best way is to conclude generally, and say he kill'd him, without naming the Day. *Dyer 50. b. Co. 4. Rep. 41. a. 44. b. 47. a. 3 Cro. 739.*

Indictment for imprisoning one without a Warrant is ill; it should have been *sans* reasonable Cause, for without Warrant one may, without reasonable Cause one may not be apprehended. *2dly*, It says he shew'd him not the Cause, &c. and that he was not bound to do. *3dly*, It



Indictment at the Suit of the King, the Court will force Defendant to carry it down to be tried at his own Charge.

It says not that he was falsly apprehended ; *Ideo Cassetur.* Stile 29, 30.

Indictments which are at the Suit of the King, the Court will force the Defendant to carry it down to be tried by *Nisi Prius*, at his own Charge ; but not Informations, which are at the Suit of the Party.

All Indictments for Treason must be taken in *propr' Com'*, but when they are taken there they may be removed and tried in another County, but by a Jury of the proper County. 1 *And.* 201. *pl.* 154.

Indictment for that he said of the Justices of Peace in *Com' Som'*, that they understood not the Statute of Excise no more than a Beetle ; and that the Parliament, that made it, understood it not, quash'd, because it is not indictable, but the Justices might have bound him to his Good Behaviour for such Words, &c. *P.* 13 *Car.* 1. B. R.

An Indictment may be brought at any Time for an Offence done against the Common Law, but for any Offence against the Statute it must be brought within the Time prescribed by the Statute.

A scandalous Letter indictable before the Sessions. *Blac.* 167.

For an Escape on Suspicion of Felony, you must set out the Felony. *H. P. C.* 206.

If one commit a Burglary or Robbery in one County, and be taken with the Goods and arraigned in another County, if it so appear upon Evidence at his Trial, he shall not have the Benefit of Clergy, by *Stat.* 25 *H.* 8. c. 3. *Stat.* 5 *Ed.* 6. c. 10. but upon such Trial the Evidence must be entered upon Record.

In Indictment for Murder *Murdravit*, without saying *ex Malitia præcogitata*, is not good. So for Felony it must say, he took and led, or carried away.

Nota ; Percussit necessary in all killings but by Poison.

The inserting of the Words *vi & armis* where they are needless, nor a false Conclusion will not hurt an Indictment. 4 *Co.* 41. And if an Indictment have these Words in the Beginning, (Feloniously and of Malice forethought,) to the Affray, and after omit it to the Stroke, yet it is good. *Ibid.* If it be for stealing a Horse, his Colour must be mentioned.

If it be the Goods of a Parson, it must be the Goods of the Rector, not of the Church. 37 *H.* 6. 33. The Goods of a Corporation, they must be said to be Goods of them, by the Name of their Corporation.

The Inhabitants of a Parish may be indicted either by their Names in particular, or in general without naming any one of them in particular ; and the Indictment

is good either way. 8 Rep. Cook and Warburton. 2  
Roll. Abr. 79.

If a Man go by two Names, he may be indicted by either of them.

When several Acts which are done at several Times do make up the Offence, as the Stroke and the Death, both Times must be certainly expressed. *Dyer* 69. And where Part of the Offence is done in one County, and Part in another County; as *A.* struck *B.* at *C.* in the County of *N.* and *B.* afterwards died of that Stroke in the County of *L.* in this Case *A.* must be tried in the County where the Party died.

Where Criminal must be tried in the County where the Party died.

An Indictment for Murder was quash'd, for that it said with a Sword he struck, and omitting, (which he held in his Hand;) also for that it omitted, (that Feloniously he made an Assault upon him, &c.) Also for that it did not shew, after the *dans ei*, &c. that Part of the Body that was wounded; also for that he said struck, and omitted (then and there): *Percussit* to express a Stroke is a material Word. *Long's Case*, 5 Co.

When Indictments have been quash'd.

If an Indictment be for a Wound, and it be laid to be under his left Arm, or under his Pap, or about his Navel, these are void for Incertainty; but under his Arm, about his Pap, or in the left Part of his Body, or in the left Part of his Belly about his Navel, these are good and certain enough. *Co.* 4. 41. 9. 114. 9 *Jac.* 1. And if there be two Wounds alledg'd, and one of them is more uncertainly set down, this will mar the whole Indictment, if it say, of the Wounds aforesaid he died. *Co.* 4. 41. 5. 120. 9. 62, 114.

In Indictment for taking an Half-penny from another in the Highway, and (he made an Assault) was omitted; therefore the Court resolved it a good Indictment for Felony, but not for Robbery; and therefore he had his Clergy. *Dyer* 224. *Hill.* 27. *Jac.* 1. *B. R.*

To indict a Man for Battery and Wounding, and not say with what Weapon, nor in what Part of the Body he is wounded, is naught.

If there be two Degrees of an Offence, as making and publishing, and the Indictment speaks of but one, it is naught. 6 H. 7. 12.

If a Man be indicted for an Offence at the Common Law, which is none, this is void, and the Party must be discharged; for if it be an Offence made upon the Statute, he must then be indicted upon the Statute. But if these Words (against the Form of the Statute) be left out in an Indictment for an Offence made so by a Statute, the Indictment

Where the Indictment is erroneous.

Indictment is erroneous ; for the Offence is not punishable but by the Statute.

When one would avoid an Indictment for any formal Fault in the Addition.

If a Man will avoid an Indictment for any formal Fault in the Addition, it must be done before the Party indicted hath pleaded to the Indictment ; for by it he taketh on him to be the same Person, 8 *Ed.* 4. c. 15. 35 *H.* 6. c. 12. yet Outlawries thereupon may be reversed for this Defect at any Time ; but of other Errors the Party make take Advantage, at any Time before Judgment, to quash, or after Judgment, to reverse it. As, if the first Indictment be in a wrong County, or the first charge him as Principal, the second as Accessary after the Fact.

Conviction in an Appeal, good Bar to an Indictment.

Conviction in an Appeal is a good Bar to an Indictment for the same Felony. 4 *Co.* *Vaux's* Case. One *Darley* was found guilty of Manslaughter, but not guilty of Murder, upon an Appeal ; and afterwards was indicted for Murder at the King's Suit, and he pleaded the first Conviction, and it was a good Bar. 4 *Co.* 40.

Clergy a good Bar in an Appeal.

*Auterfoits* convict of Manslaughter, and Clergy allowed, is a good Bar in an Appeal of Murder. *Ibid.*

But Judgment in Trespass *pro bonis asportatis*, is no Bar in Appeal of Robbery, because it is of a more high Nature. *Ibid.*

If the Indictment about a Thing whereof the Justices of the Peace have no Cognizance, as which belongs to the Justices of the Forest, or the like, the Party indicted may plead it to the Jurisdiction of the Court, and avoid the Indictment. 21 *H.* 7. 21.

N. B. *Abduxit* is used in Indictments for Horse-stealing.

*Effugavit*, for stealing Oxen, Sheep, and other Cattle.

*Asportavit*, for dead Goods ; as Household-Goods, &c.

No Indictments can be taken, nor Enquiry made, but before two Justices, one to be of the *Quorum*. *Lamb.* 48.

Error only, and not Exceptions, can discharge an Indictment after Judgment given. *Blac.* 293.



## Process on Indictments.

After an Indictment is found by the Jury for any Tref-  
 as upon a penal Statute, if the Defendant doth not ap-  
 pear the next Sessions, a *Venire Facias* may be awarded in  
 the Name of the King, directed to the Sheriff, and *Teste*  
 by the Justice ; the Form whereof is thus :

### A Venire Facias.

Essex, ff. **G** EORGE the Second, &c. To the Sheriff  
 of Essex greeting : We command you, that  
 you omit not by reason of any Liberty in your Bailiwick, but  
 do you cause J. O. of H. in your County, Labourer, to come  
 before Sir J. P. Bart. and G. G. Esq; two of our Justices  
 assigned to keep the Peace in the said County, and also  
 to hear and determine divers Felonies, Trespasses, and other  
 Offences committed in the said County, \* on the 30th Day \* The Day of  
 of July next, to come at S. in your County, to answer to us the Session.  
 upon certain Articles presented against the said J. O. and  
 have you there at the same Time this Precept. Witness  
 Sir J. P. Bart. at S. on the 15th Day of June, &c.

If the Sheriff return the Defendant sum-  
 moned, and he doth not appear at the  
 Return of the *Venire Facias*, then  
 you take out a *Distringas* against him,  
 as follows.

Essex, ff. **G** Eorge the Second, by the Grace of God, &c.  
 The Sheriff of Essex greeting : We com-  
 mand you, that you omit not by reason of any Liberty in your  
 Bailiwick, but do you enter therein und Distrain J. O. of H.  
 in your County, Yeoman, by all his Lands and Tenements,  
 and that of their Issues you answer, &c. so that you have his  
 body before our Clerk of the Peace, &c. \* to answer, &c. \* ut prius.  
 Witness, &c.

And so a Distress infinite till Appearance.

But if the Sheriff return *nihil habet*, then you must sue  
 with a *Capias* against the Defendant. The Form whereof is,

\* The Day of  
Sessions.

Essex, ff. **G**eorge the Second, &c. The Sheriff of Essex greeting : We command you that you omit not by reason of any Liberty in your Bailiwick, but enter therein, and take J. O. of H. in your County, Yeoman, if he shall be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices assigned to hear and determine divers Felonies, Trespasses and other Offences committed in your County, at L. in your County, on \* Thursday the 9th Day of July next, to come to answer to us of divers Trespasses, Contempts and Offences, whereof he stands indicted, and have you there at the same Time this Writ. Witness, &c.

If the Sheriff return *non est inventus*, &c. then you take out an *Alias* and *Pluries*, and then an *Exigent*, which run in the Form following.

Essex, ff. **G**eorge the Second, &c. The Sheriff of Essex greeting : We command you, that you call J. O. of H. in your County, Yeoman, to be exacted, (rather summoned) until, according to the Law and Custom of this Kingdom of England, he is outlawed if he shall not appear, and if he shall appear, then do you take him and safely keep him, so that you have his Body before our Justices of the Peace, and also assigned to hear and determine divers Felonies, Trespasses and other Offences committed in the said County, at the General Sessions of the Peace of your County next after the Feast of St. Thomas the Martyr next to come to be held, where-ever it shall happen to be held in your County, to answer to us of divers Trespasses, Contempts and Offences, whereof he stands indicted ; and have you there at the same Time this Writ. Witness A. B. at L. on the first Day of May, in the first Year of our Reign.

### 'The Return thereof.

**A**t which Day R. F. Knt. Sheriff of the said County returned, that at his County-Court, held at L. on the 4th Day of July, in the Eighth Year of the Reign, &c. the within written A. B. at the First, and so at four other County-Courts then next following, held there, the said A. B. was five times summoned and did not appear, therefore Outlawed.

## Indictment. Information.

543

This Outlawry must be certified into the King's Bench, because the Justices of Peace cannot award a *Capias Utlagatum*.

But the Justices out of Sessions may award a *Superseas* to stay any of the Proceedings aforesaid, before the Outlawry is certified. The Form of which is,

Essex, ss. **G** Eorge the Second, &c. The Sheriff of Essex greeting : Because J. O. of H. came before our Justices assigned to hear and determine divers Felonies, Trespasses, and other Offences committed in your County, at L. on Wednesday, &c. and found sufficient Sureties for his Appearance at the next General Sessions of the Peace of the said County of E. Therefore we command you, that you altogether forbear from further Summoning and Outlawing, taking, or in any wise molesting the said J. O. by reason of certain Trespasses, Contempts, and other Offences, whereof he stands indicted; and in what manner you shall execute this our Precept, do you make appear to the said four Justices at L. aforesaid, on the said Wednesday, &c. and have you there at the same Time this Writ. Witnesses T. P. and G. G. Esqrs.

All Indictments may be traversed ; that is, you may deny and take Issue upon the chief Point in the Indictment. And this Traverse is to be tried by a Jury at the General Quarter-Sessions, except in Riots and Forcible Entries.

By the Statute of 10 & 11 W. 3. c. 3. the Clerk of the Peace shall have no more than 2s. for drawing an Indictment upon Pain to forfeit 5l. to the Party grieved; if he draw it defective, shall make a new one without Fee, under the same Penalty.

**Ingrossers.** See **Forestallers.**

**Infant.** See **Feme Covert** and **Recognizance.**

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## Information.

**A**N Information is the Accusation of a Stranger before the Justices of Peace for the King, or for his own what it is. Benefit, against the Party offending, to the Intent to put the Party to Answer.

An



An Informer is such as informs against, or prosecutes in any of the King's Courts of Common Law, Assizes, or Sessions, those who offend against any Law or Penal Statute; and no Man may be an Informer who is disabled by any Misdemeanor. Stat. 31 *Eliz. c. 5.*

**Two Sorts of Informers.**

There are two Sorts of Informers, the one Voluntary, the other Necessary. The first are the common Informers, the last are the Attorney General, and the Clerk of the Crown in the King's Bench; and these are Honorary.

By Stat. 4 and 5 *W. & M. c. 18.* A Recognizance is to be taken of the Informer, by one Justice residing in the Place where the Cause of Information doth arise, in the Penalty of 20*l.* to prosecute with Effect, and abide such Order as the Court shall direct.

And in order to have an Information filed and Process issued for Trespasses, Batteries or other Misdemeanors, this Recognizance must be delivered to the Master of the Crown-Office; whereupon Process will issue forth without Motion in Court. And there must be an Entry made in the Office, and a *Memorandum* thereof filed in some publick Place, that every Person may see the Recognizance without Fee.

**How every Informer is to exhibit his Information.**

Every Informer shall exhibit his Information *in propria persona*, or by Attorney; and must do it within one Year after the Offence; and the Prosecution must be within one Year after the Information exhibited, unless it be where the King hath any Part, in which Case Prosecution may be commenc'd for that Part, within two Years after the Information made, by 31 *Eliz. c. 3.*

**Informer not to agree with the Offender, nor delay, nor discontinue his Suit.**

The Informer shall not afterwards agree with the Offender without Leave of the Court; if he doth, he shall stand in the Pillory two Hours, and forfeit 10*l.* to the King and Party grieved. And if he delay or discontinue his Suit, or be nonsuited; or in Case the Verdict pass for the Defendant, the Informer shall pay Costs. And these Matters are inquirable by the Justices in their Sessions, *per Stat. 18 Eliz. c. 5.* Though the Sessions cannot try an Information, unless they have Power by some Statute; but they are to proceed upon Indictments. *Jones Rep. 3. 133. Cro. Car. Farrington's Case, and Green Case, 112, 146.*

**A Note must be made of the Day of exhibiting Information.**

A Note must be made of the Day, Month, and Year of exhibiting the Information; and from that Time 'tis to be accounted a Record; and the Name of the Prosecutor, and upon what Statute the Prosecution is made, is to be indorsed by the Clerk, or he shall forfeit 40*s.*

In Informations on Penal Statutes, it is safest to conclude *contra formam Statuti in hujusmodi casu edit' & provis'* generally, and not to recite the Statute, and conclude *contra formam Statuti pred'*; for a small Misrecital may make the whole Information void. *Raym. 192.*

An Informer will not lay the Offence in any other County but where it was really done, except in Champerty, Concealing Customs, Extortion, Forestalling, Ingrossing, &c. where the Penalty exceeds 20*l.* which may be laid in any County, *per Stat. 31 Eliz. c. 5.* But the Party grieved may bring his Information in any County; for the Statute of 31 *Eliz. c. 5.* extends not to him. *Cr. Eliz. 645. Allen's Case.* And by Stat. 21 *Jac. 1. c. 4.* every Informer is to make Oath that the Offence (except in the Cases aforesaid) was done in the County where the Information was exhibited, and committed within one Year before the Information commenced; and if it cannot be proved to be done in the County, the Defendant shall be acquitted. This Act has been held to restrain Informations in the Courts at *Westminster*, unless allowed by subsequent Acts of Parliament; but an Action of Debt may be brought in *B. R.* on a Penal Statute. *H. 10 W. 3. B. R.*

This Statute doth extend to common Informations, and not to the Party grieved. Noy 71.

Where the Suit is given to the King's Courts of Record, or to any Court of Record, it is intended the Courts at *Westminster.* *Jones's Rep. 193.*

If two Informations are exhibited against one Person for one and the same Offence, and in one Court at the same Time, they shall be both void, because there is no Priority of Time to fix the Right more in one Informer than the other. And if the Defendant pleads a Difference of Time; as that one Information was exhibited such a Day in the Term; and that before that Time, (viz.) on such a Day in the same Term another Information was exhibited, and Judgment obtained, &c. This is a good Plea in Bar. *Hob. 128. Py ver. Coke. Stile 17. 3 Cro. 201, 326.*

If two Informations are exhibited against the same Person at once.

*N. B.* Where a Statute gives a Penalty to a Stranger, and he sues for it, he is a common Informer, and shall pay Costs upon the 18 *Eliz. c. 3.* but where the Penalty is given to the Party grieved, he is not a common Informer, nor liable to Costs.

who is a common Informer

If the Defendant appear and plead; and if the Informer doth not, within a Year after Issue joined, procure a Trial; or if the Defendant hath a Verdict, or the Informer procure a *Non Prof.* the Court shall award Costs to the Defendant unless the Judge doth certify on Record, that there was Cause for the Information. And if the Costs

Where the Court is to award Costs to the Defendant.

## Information.

are not paid within three Months after they are taxed, then the Defendant shall have the Benefit of his Recognizance.

If the Informer die, release, or is nonsuit, the Attorney General may proceed; and if a *Non Prof.* be obtained, the Informer may go on. 3 *Inst.* 194. 3 *Cro.* 138. *Co.* 11. *Rep.* 65. *b.* *Co.* *Inst.* 141. 5 *Rep.* 48. 11 *Rep.* 65. 3 *Rep.* 138, 583.

Penal Laws are *stricti juris*, and therefore the Statutes of *Jeofails* do not extend to them.

Where any Part of the Forfeiture upon a Penal Law is given to the Informer, he must set it forth and demand it in the Information, or 'tis void. *Hob.* 345.

The *Venire* was *preceptum est*, and the Judgment *confideratum est*, and left out; *per curiam*, 'tis not good. 1 *Lev.* 123.

Stat. 18 *Eliz.* c. 3. is made perpetual by Stat. of 27 *Eliz.* c. 10.

If the Defendant plead in Bar a prior Information, this is a good Plea. *Hob.* 128. 2 *Lev.* 141.

That there is an Indictment for the same Matter is a good Bar to an Information for it. *Mich.* 9. *G.* 1.

What Suits  
are to be de-  
termined in  
their proper  
County.

By Stat. 31 *Eliz.* c. 5. all Suits for using unlawful Games, or for using a Trade without having been an Apprentice, shall be determined only in the Sessions or Assizes of the County. *Hob.* 183. *Davison* versus *Barber*.

If the Defendant in a popular Action plead a Recovery in Bar, the Plaintiff may aver, that it was by Covin; and if it be found, the Plaintiff shall have Judgment, and the Defendant be imprisoned for two Years, and a Release of the Party shall not avail him. 4 *H.* 7. c. 20.

The Defendant to any Information may plead the general Issue, and give the special Matter in Evidence. 2 *Jac.* 1. c. 4.

An Information against one for forging an Entry in a Parish-Book of Marriages, and the Party fined. 2 *Syd.* 71.

No Informer shall agree with the Offender before a Plea pleaded nor after, without Leave from the Court, by Stat. 19 *Eliz.* c. 5.

Information  
must not claim  
more than is  
given to the  
Informer.

Information, and demands the Moiety of the Forfeiture where but the third Part is given to the Informer, is insufficient; for it has not only the Nature of an Indictment to lay down the Offence, but an Action to demand what is due to him. 1 *Cro.* 241. 2 *Cro.* 300. but 2 *Cro.* 53. cont. *Hob.* 245. *Py* ver. *Westly*.

Where Execu-  
tion ordered  
to be stayed.

Where Part of the Money received belongs to the King, the Party sued Execution of all to himself, and Execution ordered to be stayed, and a new one awarded, and in the mean Time the Money to be brought in Court. *Stil.* 318, 319.

Wh



Where an Action or Information is *tam pro Domino Rege quam pro parte*, there if the Judgment be entred only for the Party, 'tis erroneous. Dr. Trigg ver. Col. of Physicians, *Stile* 329, 330, 18.

Information for using the Trade of a *Draper* ill, not saying it was a Trade at the Time of the Statute 5 Eliz. c. 4. made, nor saying *contra pacem*. Rex ver. Grove, 16 Car. 2. B. R.

In an Information for detaining the King's Goods, 'tis sufficient to say, that they were in his Possession without shewing how they came, as in *Detinue* by a common Person it must be. 35 H. 6.

Information for Usury against two, and one found guilty, the other is not; no Judgment. Rex ver. Page, *Lane* 59, 60, 198. Where there can be no judgment.

Information that *diversis diebus & vicibus inter* such a Day and such a Day, she did such Offences, good, tho' in a criminal Case. Rex ver. Lady Broughton, M. 24 Car. 2. B. R.

*Cont. formam Stat.* how to be urged in it. Raym. 192.

## Deposition of an Informer, that the Offence was committed in the County.

A. B. of, &c. maketh Oath that C. D. of, &c. did 21 Jac. I. c. 4. commit, &c. (here set forth the Offence) in the County of, &c. where this Deponent hath exhibited his Information against the said C. D. for the same; and that the said Offence was committed by the said C. D. within the Space of one Year before the Commencing of the said Information.

## Condition of a Recognizance taken of the Informer, to prosecute, &c.

THE Condition of this Recognizance is such, that if the above-bound A. B. who hath lately informed against C. D. for committing, &c. (here set forth the Crime) do personally appear before his Majesty's Justices of the Peace, at their next general Quarter-Sessions of the Peace to be held for the County of, &c. and do then and there prosecute the said C. D. for the Offence aforesaid, according to Law; and give such Evidence and Information relating to the same, as he knoweth, and do not depart from thence without leave of the Court, but abide such Order as the said Court shall direct; then, &c. or else, &c.

Inmates. See Cottages.

## Innkeepers.

ANY one may erect an Inn for Lodging of Travel-  
lers without any Allowance or License ; for it is  
not a Franchise, as was resolved in Parliament, and by all  
the Judges. 20 *Jac.* 1. *Roll's Rep.* 2d Part 84. *Hutton's*  
*Rep.* p. 99.

But if any Inn useth the Trade of an Alehouse, it shall  
be within the Statute of Alehouses ; by *Yelverton.* *Paf.*  
9 *Jac.* 1. *Bulf. Rep.* 1. p. 109.

Cases of Rob-  
beries in Inns.

One comes to an Inn, and the Innkeeper says to him  
Here are Persons resort to my House, I do not know  
them, nor what their Behaviour is, and therefore take  
the Key of such a Chamber and put your Things there  
at your own Peril, for I will not take any Charge of  
them ; and they are afterwards stolen, the Innkeeper shall  
answer for them ; for an Innkeeper is by the Law charge-  
able for all Things that come to his Inn ; and he cannot  
discharge himself by such Words. *Moor's Rep.* p. 78.  
*Plow.* 207. but if he refuses him, and says his House  
full, and yet he will stay, &c. it is otherwise. *Hill.*  
5 *P. M. Bendloe's Rep.* p. 18. *Bird ver. Bird.* *Dy.*  
158. b. *Paf.* 26 *Eliz.* *B. R. Co. Lit.* 8. 32. *Cal.*  
*Case.*

If a Man hires a Chamber in an Inn for some Time  
there the Innkeeper shall not be chargeable with any Rob-  
bery committed in that Time. But if one leaves Goods  
in an Inn, and goes about his Business, and returns the  
same Day, and his Goods are stolen, the Innkeeper shall  
answer for the Robber of the Goods. *Paf.* 7 *Jac.*  
*Moor's Rep.* 876. *Walbrook ver. Griffith.* 2 *Brownl.*  
*Rep.* 254. *Latch's Rep.* 88. 126. *Gulielm's Case.* *Dy.*  
*ver. Thaine.* *Trin.* 2 *Car.* 1 *Bendloe's Rep.* 173. *M.*  
5 *Jac.* 1. 2 *Cro.* 188. *Gilley ver. Clark.* *Noy* 126.

If an Innkeeper refuses to lodge a Guest, he may  
have an Action *super casum* against him ; but if he will  
lodge there, his House being full, and says he will manage  
shift as well as he can, if he lose his Goods, Host shall  
not answer for them ; but on Issue that he was not re-  
bed in Default of him or his Servants, may give that  
Evidence, that he lodged against his Will. *And. Pl.* 60.

Action against an Innkeeper for Goods lost ; he pleads  
that he gave them Notice to lock them up in a Room  
and then he would answer for them, else not ; notwithstanding  
which the Plaintiff left them at large where they were

were lost; and adjudged a good Plea. *Dyer* 266. *Co. Rep.* 33.

An Innkeeper maintains a Horse for his Meat; and if no special Agreement were made what to pay, when he eats off his Head, he may sell him, because a Charge to keep him; but where a special Agreement is for so much a Day, he cannot, because he has rested upon the Agreement. So a Taylor may detain a Garment for Non-payment, not sell it. For the Case of Hostlers, *vide* *Co.* 207. The Custom of *London* is, that Innkeepers may sell an Horse for his Meat, but not for the Meat of other Horses.

An Innkeeper bid his Guest draw the Wain-load of Wool into an inner Court, or else he would not answer for it; he did not, and some was lost, and the Innkeeper was discharged. *Moor Pl.* 299.

As to Loss of Goods, there must be Defect in the Innkeeper or his Servants; and therefore if the Guest's Servant, or one that he desires to lodge with him, steal, &c. the Host is not chargeable; otherwise if one that the Innkeeper appoints to lodge with him; but the Innkeeper is chargeable though he deliver not the Goods to the Host, or though the Guest have the Key. But if the Innkeeper desire him to lock them up, and he will not, it is the Guest's own Loss.

If one go from his Inn and say, he will return in two or three Days, and in the Interim his Goods are stolen, the Host is not liable. 2 *Cro.* 188, 189. But if one go into the Town, and return not till Night, he is a Guest. *Edwin Sands's Case.* And so if one leave his Horse in Livery, though himself lodge not there, he is a Guest, and his Horse. *Gill ver. Clark.*

Action against an Innkeeper, who pleads that the Plaintiff had a Key of his Chamber, and a Guest to lodge with him, who stole, &c. and held a good Bar; else *H.* 6. 386. they having a Key only, is no Plea; but where that he had a Key, and requested a Stranger to lodge with him who robbed him, is a Bar.

But if one board and sojourn in an Inn, the Innkeeper is not responsible. 3 *Car.* 1. *B. R.*

A Stranger brings my Horse to an Inn without my knowledge, and leaves him there, the Innkeeper may detain him till he is satisfied, because he was compellable to keep him, and not at his Peril to know the Owner; if I put my Horse there my self. *Poph.* 127. 3 *Bulst.* 389. *Hill.* 14 *Jac.* 1. *B. R.* 201, 650.



## Inrollment.

**A**N Y one Justice of Peace may join with the Clerk of the Peace, in taking of an Inrolment of an Indenture of Bargain and Sale of Lands, &c. lying in the same County; and each of them is to have Twelve-pence, if the Land exceed not in Value Forty Shillings a Year; and if it do, then Two and Six-pence a-piece; and if they take more, are liable to be fined. 27 H. 8. c. 10.

Deeds must be inrolled in six Months.

But all Deeds to be inrolled according to this Statute, must be indented *revera*, and must be inrolled within six *Lunar* Months after the Date of the same Indenture; and if it have no Date, then within six *Lunar* Months after the Delivery of the Deed; and if it be inrolled the very Day of the Date of the Deed, or the very last Day of the six *Lunar* Months, it is sufficient.

Months how to be computed.

When Mention is made in any Statute of Months, they are to be understood *Lunar* Months, unless otherwise expressed; but when a Year or Half a Year, or a Quarter of Year is mentioned in any Statute, then it shall be computed according to Kalendar Months. 6 Rep. 62. And a Year, or a Twelve-Month (in the Singular Number) includes the whole Year according to the Calendar; but twelve Months, (in the Plural Number) or eight Months, or six Months, &c. shall be accounted after Twenty-eight Days to every Month. 5 Co. 135. except in a *Quare Impedit*.

## Issues.

Forfeitures of Issues how to be levied.

**F**Orfeitures of Issues by Jurors are to be levied by Records of Execution awarded by the Justices of Peace by Stat. 27 Eliz. c. 7.

The Sheriff is to levy those Issues, and if he levieth other Estreats of Issues than of Right are due, he forfeiteth five Marks to the King, and as much to the Party. 27 Eliz. c. 7. Cro. 201.

**J**udgment in High Treason, Misprision of Treason, Petty Treason. Vide Treason. Felony, Petty Larceny. Vide Felony.

Jurors

## Jurors and Juries.

**T**RIAL by Juries is very antient, if not coeval with the Foundations of our Constitution, and hath continued through all the Revolutions of Time. *Ad quæstionem juris respondent Judices, ad quæstionem facti respondent Juratores.* This Way of Trial is now used in no other Country.

In Matters of Crime and Forfeiture, every *Englishman* is to pass a double Jury before he be condemned, *viz.* the Grand Jury to find the Bill, and the Petty Jury to find the Fact. Every Englishman to pass two Juries before he can be convicted.

Jurors are returned by the Sheriff, by Virtue of a Precept to that Purpose; and if any Juror be returned at the Nomination of any other than the Sheriff, or his Bailiff sworn, the Panel is void, by Stat. 11 H. 4. c. 9.

At Common Law both King and Subject had two lawful Challenges to the Jurors, the one Peremptory, the other upon Cause shewed; but it is provided by 33 Ed. 1. that in Case of Felony, the King shall not challenge peremptorily but must shew Cause, which shall be tried; and if found not sufficient, rejected; yet the peremptory Challenge remaineth for the Party; but it is abridged by 32 H. 8. c. 3. for whereas at Common Law he might have challenged Thirty-five without Cause shewn, it is now reduced to Twenty; but he may challenge as many as he pleases for Cause shewn. Of Challenges.

Where Jurors are outlawed, their Acts are void; and so if not returned by the Sheriff. *Ley* 81.

In an Appeal of Manslaughter, the Defendant may challenge Twenty peremptorily. *Moor* 12.

Foreigners are to have a Jury *de medietate lingue*, six *Jury de medietate lingue*, and six Foreigners, if there be so many in the *Englisch*, and six Foreigners, if there be so many in the *tate lingue*. Place; if not, as many as may be found there, and these may be of any Nation; but the Party must pray such Jury. *N. B.* But Persons calling themselves *Egyptians* are ousted of this Benefit, by 1 & 2 P. & M. c. 4.

It is a good Challenge to a Juror, that he is one of the indictors; see Stat. 25 Ed. 3. c. 3. and see more fully for Cause of Challenge in criminal Matters. *Staundf.* pl. 157. b. and *Co.* 1 *Inst.* fol. 156.

The Jury upon any Issue (if they doubt of the Law) Special Verdict may give a Special Verdict; and that by the Common dict. *law*, before *Westm.* 2. c. 30. See *Co. Inst.* 425.

Grand Jury  
what and who.

There are two Sorts of Juries, the Grand Jury and the Petit Jury; the Grand Jury consists generally of a Number above Twelve, and under Twenty-four of grave substantial Gentlemen, or of the better Sort of Freeholders, chosen indifferently by the Sheriff out of the whole County, to consider of all Bills of Indictment preferred to the Court, which they either approve, by writing on them *Billa vera*, or disallow, by indorsing *Ignoramus*. It is best to have an odd Number, and if Twelve agree, it is conclusive to the rest.

Petty Jury  
what and who.

The Petit Jury consist of Twelve Men, and are impanelled as well upon Criminal, as upon Civil Causes. Those that pass upon Offences of Life and Death, do bring in their Verdict either Guilty or Not guilty; whereupon the Prisoner, if he be found guilty, is said to be convicted, and so afterward receiveth his Judgment and Condemnation; or if Not guilty, is acquitted and set free.

Qualification  
of Jurors.

Persons qualified to serve on Juries by Stat. 2 H. 5. c. 3. were such as had 40s. *per Ann.* by Stat. 27 Eliz. c. 6. it was made 4l. a Year, and by 4 & 5 W. & M. c. 24. it is increased to 10l. *per Ann.* Freehold or Copyhold, for their own, or some other Person's Life, except in Cases *per medietatem linguæ*. But in Corporations, Felonies may be tried by Freemen worth 40l. in Goods, Stat. 23 H. 8. c. 13. And in *Wales* they must have 6l. *per Ann.* and if any be returned of less Estate, it shall be good Cause of Challenge; and he shall thereupon be discharged upon his own Oath. Tales-Men 5l. in *Wales* 3l.

By Stat. 7 & 8 W. 3. c. 32. The Panel to be returned for the Grand Inquest of *Yorkshire* shall consist of Forty-eight Freeholders or Copyholders, and no more, each having 80l. *per Ann.* and at the Assises there shall be ten Panels and no more of Petty Jurors, consisting of Twenty-four Jurors in each Panel, except where Special Jurors are directed.

Constables to  
return to Ju-  
stices Names  
of Persons fit  
to serve on Ju-  
ries.

7 & 8 W. 3.  
c. 32.

Justices in *Michaelmas* Sessions yearly shall take from the Constables, &c. Return of their Lists of Names and Places of Abode of Persons qualified to serve on Juries, between the Age of Twenty-one and Seventy; and a Duplicate of those Lists the Clerk of the Peace is to deliver to the Sheriff before the First of *January* next following. 7 & 8 W. 3. c. 32. This List must be entered into a Book, and kept among the Records of the Sessions, and none to be impanelled, whose Name is not entered in the List.

And



And by Stat. 3 & 4 Ann. c. 18. Justices at *Midsum-* Method of re-  
mer Sessions yearly, are to issue out Warrants under the turning Juries.  
Hands and Seals of two or more of them to the High  
Constables of each Hundred, requiring them to issue out  
their Precepts to the Petty Constables, &c. to meet  
them within Fourteen Days after the Date of such Pre-  
cept, to prepare a List of Freeholders according to the  
Stat. 7 & 8 W. 3. c. 32. which Lists they must sign and  
return the first Day of *Michaelmas* Sessions.

The High Constables not issuing out such Precepts,  
&c. shall forfeit 10*l.* and the Petty Constables not  
meeting and returning the Lists, forfeit 5*l.* This Act  
7 & 8 W. 3. c. 32. to be read publickly in open Court  
at the Quarter-Sessions held after the Twenty-fourth of  
*June* yearly. Jurors are to be summoned at least six *How they are*  
Days before the Sessions, by shewing them a Warrant un- summoned.  
der the Seal of the Sheriff's Office, if at Home; and if  
they are not at Home, then a Note must be left by the  
Sheriff's Officer at the Dwelling-houses of the Persons,  
with any Person inhabiting there, which is sufficient.  
And if any Jurors are summoned otherwise, or the She-  
riff or Bailiff shall excuse any Person for Favour or Re-  
ward, the Sheriff is liable to a Forfeiture of 20*l.* to be  
recovered in the Courts of *Westminster*.

By Stat. 3 Geo. 2. it is enacted, That if any Persons *Penalty on Per-*  
required by the Stat. 7 & 8 W. 3. c. 32. and 3 & 4 Ann. sons who ought  
c. 18. to give in, or by this Act to make up true Lists of to give in Lists  
the Names of Persons qualified to serve on Juries, shall omitting, &c.  
wilfully omit out of any List, any Name which ought to  
be inserted, or take Money for omitting or inserting any  
Person, he shall forfeit 20*l.* on Conviction before one  
or more Justices; one Half to the Informer, and the other  
to the Poor of the Parish; and if not paid in five Days,  
shall be levied by Distress, by Warrant from one or more  
Justices.

Clergymen, Apothecaries, Infants, Aliens, Butchers, What Persons  
Persons attainted or indicted, and Quakers are not to serve not to be Jury-  
on Juries. men.

If Grand Jurymen discover their Secrets, they may be *Grand Jury-*  
fined, or if they make a favourable Presentment, they men not doing  
may be committed and fined; or if the Grand Inquest their Duty, to  
conceal any Thing, the Justices of Peace may impanel be fined.  
an Inquest to inquire of such Concealment, and fine them.  
3 H. 7. c. 1. And Justices of Peace have Power to al-  
ter the Panel, if they see Cause, and may remove a Ju-  
ror after he is sworn. 3 H. 8. c. 12.

Where Offences on the High Seas, and in another Kingdom, are to be tried.

In Confederacies, Felonies, Murders, Robberies and Treasons committed on the High Seas the Criminal shall be tried where the King shall appoint by his Commission. 28 H. 8. c. 15. And in Treasons and Misdemeanors of Treason done out of the Kingdom, the Offenders shall be tried in B. R. by a *Middlesex* Jury, or by special Commission in any County by a Jury there, 35 H. 8. cap. 2.

Jury giving a false Verdict how punished.

If a Jury give a Verdict in any Court of Record, either in a real or personal Action, where the Debt or Damage is above 40s. they may be punished by a Judgment in Attaint, but the same Witnesses, and no more must be produced to the Jury to try the Attaint, as gave the Evidence to the first Jury. *Dyer* 53.

Juryman not doing his Duty, may be fined; but he may differ in Judgment from them.

If a Juryman shall keep his Fellows without giving any Reason, or shall withdraw from them, he may be committed and fined: But if a Juryman shall differ in Judgment from his Fellows, he ought not to be fined, although his Dissent be not founded on as good Reason as the rest; and although he keep the rest some Time from giving their Verdict. *Cro. Eliz.* 779.

Jury not to cast Lots how to find.

If any Jury cast Lots, whether to find for the Plaintiff or Defendant; 'tis such a Misdemeanor for which they may be fined, and the Verdict set aside, for they are sworn well and truly to try the Issue between the Parties. Jury fineable only for Misdemeanors. *Raym.* 138. *Sid.* 272.

Jury not agreeing to be carried round the Circuit.

In Cases of Life and Death, if the Jury do not agree of their Verdict at the Assizes, they must be carried round the Circuit till they do agree. 1 *Vent.* 97.

Jurors not to ask Witnesses Questions after gone from the Bar.

If after the Jury are gone from the Bar, one of them shall call a Witness who was sworn, and had given Evidence in Court, and shall desire him to repeat it again, and he does it accordingly; this is a Misdemeanor for which the Verdict may be set aside. *Cro. Eliz.* 189.

Jurors not to eat and drink at the Charge of the Parties.

If Jurymen shall eat or drink at the Charge of either of the Parties, before or after they are agreed of their Verdict before it be given into Court, they may be fined, and their Verdict set aside; and if they eat at their own Charge, they may be fined; but then the Verdict may be good. 1 *Leon.* 133. *Dyer* 137.

None to give Directions to the Sheriff whom to return.

If one Juror be outlawed, or returned at the Nomination of another, it will make the whole Panel void, and none are to give Direction to the Sheriff what Persons to return on a Jury; for an Attorney was turned over the Bar for such an Offence. *Moor* 882.

Challenge to the Array is challenging the whole Panel for some Irregularity.

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Challenge or Excepting against the Polls is a Challenge Challenges.  
to the particular Persons ; but there can be no Challenge  
either to the Array or Polls, till the Jury is full ; and that  
as well by a Tales, as if all on the principal Panel ap-  
pear, and the Challenge must be before they are sworn,  
or else it will be too late. *Yelv. 3.*

A principal Challenge to the Array may be 1. In re- Challenge to  
spect of Partiality, or Kindred in the Officer who return- the Array.  
ed the Panel ; as if the Sheriff be of Kin to either of  
the Parties. 2. If any Juror is return'd at the Desire of  
the Party. 3. If either Party have an Action of  
Debt against the Sheriff, but not *e converso*. In all  
these Cases the whole Array must be quashed ; but if  
one Man be sworn, the Array cannot be challenged. *Cro.*  
*Eliz. Style 233.*

Challenge to the Polls may be 1. *propter honoris re-* To the Polls.  
*spectum*, as if a Peer be returned of the Jury in the Case  
of a common Person.

If a Peer is Defendant, there must be a Knight of the If a Peer is  
Jury, or the Array may be challenged ; but it hath been Defendant,  
a Question if he is Plaintiff, and will not challenge, for there must be  
that there is no Knight return'd, whether the Defendant a Knight re-  
might do it, and it seems he may not. *Dyer 107.* 2. turn'd on the  
*Propter defectum patriæ libertatis*, as Aliens ; aut annui Jury, &c.  
*cenfus*, as not having 10*l.* a Year, &c. 3. *Propter af-*  
*fectum*. 4. *Propter delictum*, as Persons attainted or out-  
lawed.

Where there is either express Malice or Favour ; as if  
the Juror be of Kin to either Party, let it be never so re-  
mote, or by Marriage.

If he hath given a Verdict already in the same Cause,  
but then he must produce the Record if he will conclude  
it as a principal Challenge : If a Suit at Law depending  
between the Juror and Party.

The Question was concerning a Way, and the Juror  
was challenged because he had affirmed before the Trial,  
that there was a Way, and that it wou'd be an Injury to  
the County if it shou'd be found otherwise, and the Chal-  
lenge was allowed.

Indictment in *B. R.* for a Battery committed at *Can-*  
*terbury*, and one of the Jurors was challenged because he  
had been of the Grand Jury who found the Battery, and  
it was allowed. *Sid. 244.*

It was likewise allowed because the Prosecutor had  
been entertain'd at the House of a Jurymen. 1 *Vent.*  
309.

If a Juror is serv'd with a *Subpœna* as a Witness on  
either Side, or hath declared how he will find his Ver-  
dict,



## Jurors and Juries.

dict, or for whom, these are good Causes of Challenge.  
1 *Bulstrode* 101.

But he shall not be examined to any Matter criminal or infamous of himself, in order to Challenge him.

### The Form of a Challenge to the Array, for that the Panel was returned at the Instance of either Party.

**A**ND thereupon the said T. challenges the Array of the Panel, because he saith, that the Panel was array'd by J. S. late Sheriff of the County aforesaid, at the Nomination of the said A. B. and in his Favour, which said Challenge by the Triers sworn for that Purpose is found to be true.

How many  
Prisoners may  
Challenge.

In an Appeal of Manslaughter, and upon an Indictment of Murder, a Man may challenge twenty Persons peremptorily, that is, without assigning any Cause; *per Stat. 22 H. 8. c. 14.* for by the Common Law he might have challenged any Number under three full Juries. *Moor* 12. And if he challenges more there is no Penalty, but the Court is to over-rule the Challenge. And in case of Treason, a Man may challenge Thirty-five; *per Stat. 1 & 2 P. & M. c. 10.*

Stat. Westm.  
2. c. 18. does  
not extend to  
criminal Cases.

By Stat. *W. 2. c. 18.* Sheriffs are to summon in one Assize twenty-four and no more; but it has been adjudged, that this Statute extends only to Jurors returned in civil Cases, and not for Trials of Criminals; for in such Cases the Sheriffs might be commanded by the Court to return as many as they please; and 'tis usual to return Sixty, because of the Challenges. *Kelynge* 16.

By Stat. 3 G. 2. 'tis enacted, That no Persons shall be returned as Jurors to serve on Trials at any Assizes, or *Nisi Prius*, &c. who have served within one Year before, in the County of *Rutland*, or four Years in the County of *York*, or two Years within any other County, not being a County of a City or Town; and if any Sheriff offend contrary hereto, Judge of Assize may fine him not exceeding 5 *l.* for one Offence.

In Middlesex  
no Person to be  
return'd on a  
Jury, who has  
serv'd within  
two Terms, &c.  
before.

But by Stat. 4 G. 2. this Clause shall not extend to the County of *Middlesex*, in which County no Person shall be return'd to serve as a Juror at any Sessions of *Nisi Prius* in the said County, who has been returned as a Juror at any such Session of *Nisi Prius* in the two Terms or Vacations

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ocations next immediately preceding, under such Penalty on the Sheriff, or other Officer employed in the Summoning or Returning of Jurors in the said County, as might have been inflicted on them for any Offence against the said Clause. And all Leaseholders upon Leases, where the improved Rents or Value do amount to 50*l.* or upwards *per Ann.* over and above all Ground Rents, or other Reservations, payable by Virtue of the said Leases, shall be liable and obliged to serve upon Juries when they shall be legally summoned for that Purpose.

In Stat. 7 & 8 *W. 3.* There is a Clause inhibiting Persons in *Yorkshire* to serve on Juries more than once in four Years, except in the City of *York*, and Town of *Hull*, and Counties of the said City and Town.

That at the Request of such Jurors, the Sheriffs of *Yorkshire* shall register their Names at the End of every Assize and Sessions, and shall give them a Certificate of their Attendance and Service.

That at the Assizes or Sessions, there shall be but forty Persons returned to serve on the Grand Inquest, or any other Service.

Then there is a Clause, that the Inhabitants of *Westminster* shall not serve in any Jury at the Sessions held for *Middlesex*.

If a Man above seventy Years old be returned, he must serve, if the Judge directs it; but he may sue the Sheriff upon *Westm. 2. cap. 38.*

The Stat. 4 & 5 *W. & M. c. 24.* being made but for three Years, was continued by 7 & 8 *W. 3. c. 32.* for 7 Years; and by another Act 1 *Annæ, c. 13.* was further continued for 7 Years, was by another Act 10 *Annæ, c. 14.* continued for 11 Years from the Expiration thereof, and from thence to the End of the next Session of Parliament.

By Stat. 10 *Ann. 14.* The Word Sessions of the Peace in the Act 7 & 8 *W. 3. c. 32.* shall be construed to extend to any Sessions of the Peace to be holden for any of the Ridings, and to Adjournment of such Sessions; but any Person of 150 *l. per Ann.* or more, serving as a Juror at such Sessions, shall not be exempted from serving as a Juror at Assizes in *Yorkshire* for four Years, or any other Term.

The Grand Jury ought not to have a Keeper, but a Bailiff to wait upon them, nor to be without Victuals; but may be adjourned to bring in their Bills.

Regularly the Grand Jury cannot enquire into any Thing but what ariseth in the County, for which they are returned; and therefore if a Stroke be given in one County, and

Persons in *Yorkshire* not to serve on Juries above once in four Years, 1 Year in *Rutland*, and 2 Years in other Counties. And their Names to be registred.

A Man above Seventy must serve if Judge directs.

To what the Word Sessions shall extend.

What the Grand Jury can enquire of.

the

Where a Writ  
of Attaint lies.

Jury not to be  
fined only for  
finding contra-  
ry to Direction  
of the Court.

But fined if un-  
lawful Prac-  
tice to gain a  
Verdict.

So on tossing  
up Cross and  
Pile.

Or cast Lots.

the Death happen in another, the Party could not be indicted where the Person died ; but this is now remedied by the Stat. 2 & 3 Ed. 6. c. 24.

Any Person who is injured by a false Verdict, may have a Writ of Attaint against the Jury, unless where the King alone is a Party against a Subject, and the Jury find for him, though falsely ; yet no Attaint lies in such Case ; but 'tis otherwise where the Suit is *tam pro Domino Rege quam pro seipso* ; but this Way of punishing a Jury is seldom used, except where the Corruption is apparent.

But a Jury cannot be fined only for giving a Verdict contrary to Evidence, where an Attaint lies against them, or where it does not ; because it is impossible for the Judges to know the Fact, as the Jury may ; for the Judge knows it no otherwise, but by the Evidence given in Court ; but the Jury are supposed to know it by other Methods, viz.

By being return'd of the Vicinage, by their own personal Knowledge, by knowing the Witnesses to be Persons of no Credit. *March* 11. 3 *Leon.* 207.

So that, if the Judges cannot have so much Evidence of the Fact as the Jury may, they may go against his Direction in Law ; because where the Fact is not agreed, he cannot direct what is Law. *Vaughan* 147. So that for Misdemeanors they may be fined, but not barely for finding against the Direction of the Court. So in *Bayne's* Case, where the Jury agreed of two Verdicts intending to conceal one, if the Court should be satisfied with the other. *Cro. Eliz.* 778. And in *Wharton's* Case they were not fined for giving their Verdict against the Direction of the Court only ; but the Judges were of Opinion, that some unlawful Practices had been used to procure that Verdict. *Yelv.* 83.

In *Fry and Hardy's* Case, the Verdict was set aside because it was given upon tossing up a Six-pence, if Cross for the Plaintiff, if Pile for the Defendant ; and the Six-pence coming up Cross, they all agreed to find for the Plaintiff. This was a *Northumberland* Jury, and they were ordered to attend the following Term, in order to be fined. *Jones* 83.

So in *Wagstaff's* Case, the Jury were fined and committed, and upon a *Habeas Corpus* brought, they were not bailed ; but it must be for some Misdemeanor, and not barely for refusing to find according to their Evidence. *Hard.* 409. *Raym.* 138. *Sid.* 272.

So if they cast Lots, whether to find for the one or the other, 'tis a Misdemeanor. 2 *Lev.* 140, 203.

Jurors  
Evidence  
Verdict.

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Jurors asking Witnesses Questions after withdrawn, and evidence given, a Misdemeanor allowed to set aside a Verdict. *Cro. Eliz.* 189. 2 *Salk.* 644.

If the Jury at Sessions cannot agree on their Verdict, they may, as in other Courts, be kept without Meat, Drink, or Fire, 'till they agree.

Jurymen have been fined for having Figs and Apples in their Pockets, though they did not eat them. *Moor* 599. *Leon.* 133.

The Foreman of the Jury declared, that the Plaintiff should never have a Verdict, let him produce what Evidence he would; and upon *Affidavit* made of this Matter, a new Trial was granted.

By 4 & 5 *W. & M. cap.* 24. Sheriff, Clerk of Assizes, or any other Officer taking Fee, &c. for returning of any Tales, shall forfeit 10*l.* to the King and Prosecutor.

Jury of all Denizens, where the Defendant is extraneous, is good, unless he pray a Jury *per medietatem linguæ*, 3 *Cro.* 869. and where a Baron is sued, a Knight must be returned of the Jury. *Ibidem.*

All the Jurors must be sworn, otherwise their Presentments are void; but the Record being that all the Jurors were sworn, the Presentments are good, tho' all be not sworn. *Lam.* 399.

Jurors amerced for refusing to present, being sworn. *1 Co.* 39. 2.

Juror, after he is sworn, upon Cause may be removed, or the Panel altered by the Justices. *Lam.* 400.

No Juror is to be returned without an Addition, where by he may be known. 27 *Eliz. c.* 7. *Lam.* 432.

If a Peer be returned on a Jury and sworn, he may be challenged by either Party, or he may challenge himself. *1 Inst.* 156.

The Array may be challenged where a Peer is Party, and no Knight returned of the Jury. *Ibidem.*

A Jury fined 10*l.* for not finding a Bill upon plain Evidence. *Sid.* 219.

But a Nobleman being to be tried, cannot challenge any of his Peers, being to try the Cause upon Honour.

One indicted of Felony may challenge as many as he will, shewing Cause; but without Cause he may not challenge above Twenty. 22 *H. 8. cap.* 14. *Lamb.* 54. 28 *H. 8. cap.* 1.

Or for having Apples about them, though did not eat them.

Defendant must pray *medietatem linguæ*.

Juror must not be returned without Addition.

Good Cause of Challenge, if Prosecutor is of the Jury.

If one Man indicts another of Felony who pleads, and he who indicted him is returned upon the Jury, it is good Cause of Challenge. *Lib. Affis. 12. fol. 37. Pl. 36. Pasch. 7. Ed. 4. fol. 4. Pl. 11. Mich. 18 Ed. 4. fol. 12. Pl. 8.*

A Man is indicted for Murder, the Jury may find it Manslaughter. *Plowd. Com. fol. 101.*

When the Challenge is to be made.

Any one may challenge for the Crown, as well as King's Counsel, and when they have Cause to challenge, they must challenge them as they are called to the Book; but they are to shew the Cause of their Challenge before that the other Jurors which are not challenged are sworn; and then if the Cause shewn be sufficient, the Juror challenged shall be withdrawn. *Mich. 8 Jac. Bulfr. Rep. 1. p. 84. Morgan's Case.*

Jury can't find one guilty of Burglary, and the other of Felony on the same Indictment, and the same Evidence.

*T. &c.* his Wife and two of his Sons, were indicted at the *Old-Baily*, for that they *Felonice & Burglariter* broke the House of *F. T.* and took away Money and Jewels to the Value of 5000 *l.* the Jury found *T.* guilty of Burglary, and one of his Sons guilty of Felony, and the others they acquitted, and all upon the same Indictment, and the same Evidence. And the Judges were of Opinion, that the Jury might have found them all guilty of the Felony; but they could not find one guilty of Burglary, and the other of Felony, upon the same Indictment, and the same Evidence. *Mich. 15 Car. 2. Sid. 171. Pl. 4. Rex versus Turner and his Wife, and two of his Sons.*

Where Jury ought to find all or none.

An Indictment of forcible Entry and Detainer was preferred against *S.* and the Jury found, as to the Detainer with Force, *billa vera*; but as to the Entry *Ignoramus*. The Court was of Opinion, that the Jury ought to have found all or none, and quashed the Indictment. *Pasch. 21 Car. 2. B. R. Vent. Rep. pag. 25. The King versus Serjeant.*

### The Justices Precept to the Sheriff to return a Jury.

**G**EORGE the Second, &c. The Sheriff of Essex greeting We command you, that you omit not by reason of any Liberty of your County, but that you cause twenty-four honest and lawful Men of the Hundred of K. to come before our Justices assigned to keep the Peace in the said County, at K. in the County aforesaid, on the 8th Day of July

## Jurozs and Juries.

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ext following; to hear and do those Things which in our  
ehalf shall then and there be enjoined them, and have you  
ere at the same Time this Mandate. Witness T. W.  
Part. at K. (on such a Day).

A Warrant from the Justices in Sessions  
to the Constables, to make Return  
of Persons fit to serve on Juries.

Glouc. ff. Ad Generalem Quarter' Session' Pacis,  
&c. tent' pro Com' præd' apud, &c. die &  
Anno, &c.

**T**HES E are in His Majesty's Name to command you 3 & 4 Annæ.  
to send your Precepts to all the Petty Constables and  
Tubing-men within your Hundred, to give you a Meeting  
within fourteen Days after the Date of such your Precepts,  
in order to prepare a List of Freeholders qualified according to  
the Acts of Parliament to serve on Juries at the next Mi-  
chaelmas Quarter-Sessions to be held for the County afore-  
said; and that they do sign such Lists respectively, and that  
you do make Return thereof the first Day of the said Michael-  
mas Quarter-Sessions; and hereof you and they are not to  
fail, at your Perils. Given, &c.

## Justices of Peace.

**T**HE Original Power, Authority, &c. of Justices  
of Peace in general, you will find fully spoken  
in the Beginning of this Treatise, pag. 2. and thi-  
er I refer you.

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Recd.



## Keels. Vide Coals.

## King and Queen.

Justices may proceed at Assises or Sessions, tho' the King should die.

**N**O Patent or Office, Civil or Military, to cease 'till six Months after Demise of King or Queen, unless made void by next immediate Successor. Justices may proceed in Business at Assises or Sessions, &c. 7 W. 3. c. 27. 1 Ann. c. 8. 4 Ann. c. 8. 6 Ann. c. 7.

## Labourers. Vide Apprentices and Servants.

## Lamps and Lights.

Housekeepers to hang out Lights, or pay for Lamps. Lights from Michaelmas to Lady-Day, or pay 2s.

**H**ousekeepers in *London*, or within the weekly Bill of Mortality, whose Houses adjoin to, or are near the Street, are to hang out Lights every Night from *Michaelmas* to *Lady-Day*, from the Time it is dark, till Twelve a-Clock, or to pay for Lamps, under the Penalty of 2s. for every Default, to be levied by Distress; and if not paid in six Days, to be committed 'till Payment. 2 W. & M. c. 8.

Conviction to be on View of Justice, Confession, or the Oath of one Witness before one Justice.

Two Justices are to approve the Distance which one Lamp is to be set from another.

Mayor &c. of *Canterbury*, may appoint a Person to fix and light Lamps, &c.

By an Act passed 1 Geo. 2. for the better inlightning the Streets of the City of *Canterbury*; the Mayor, Recorder, and Justices at *Midsummer* Quarter-Sessions, shall appoint a proper Person to fix and light the Lamps in the Streets, Lanes, or other publick Places, from *September* to *May* 1, yearly, from the Time it grows dark 'till Twelve at Night; and the Mayor, Recorder, and Justices at the Quarter-Sessions shall appoint one Inhabitant

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of each Parish to settle a Rate not exceeding 3 *d.* in the Pound on the Inhabitants for maintaining the Lamps; and the Mayor, Recorder, and Justices are to appoint Collectors for collecting the same quarterly; and if any Person shall refuse to assess or collect, being thereto appointed, he shall forfeit 5 *l.* and if any Person assessed shall refuse to pay the same by the Space of Fourteen Days after Demand, the Collectors, by Warrant, may distrain, rendring the Overplus after necessary Charges deducted. Persons aggrieved may appeal to the next Quarter-Sessions, who are finally to determine the same.

The Money assessed and collected for the Lamps shall be accounted for by the Collectors, to two or more Justices (the Mayor to be one) as often as the Justices shall require such Account; and if the Collector shall refuse to account and pay the Monies in his Hands to such Person as the Justices direct, the Mayor, or any two Justices, shall commit him to the common Gaol without Bail, 'till he shall account and pay so much as shall appear to be remaining in his Hands.

## A Warrant to levy the Penalty for Default of putting up Lamps.

**W** Hereas it has been duly proved before me, that A. B. 2 W. & M. c. 3. of your Parish, has made Default in hanging out a Light at his Door for three Nights successively, viz. 1, 2, and 3, &c. of this Instant, &c. without making any Agreement for Lamps instead thereof, contrary to an Act of Parliament in that Case made: These are therefore to require you to levy, by Distress and Sale of the Goods of the said A. C. the Sum of 6s. which he has forfeited for the three several Defaults aforesaid. Given, &c.

Latency. Vide Felony.

## Leather, Hides, &c.

**T** HE two chief Statutes which relate to Leather are, 1 *Jas. I. c. 22.* and 9 *Annæ, c. 11.* Tanners to serve Seven Years Apprenticeship, &c.  
No Person shall tan Leather, &c. unless he hath served an Apprenticeship for Seven Years, or been instructed therein

therein for that Time, or be a Widow or Daughter of a Tanner, by whom a Tanfat shall be left, or a Son to whom such Tanfat shall be so left, which hath used the Trade for four Years, on Pain of forfeiting the Leather tanned, or the Value thereof. 1 Jac. 1. c. 22. And if a Butcher use the Trade of a Tanner, he shall forfeit 6s. 8d. per Day.

And Leather shall not be put to be curried by any Artificer in *London* or three Miles thereof, but to some Person free of the Company of Curriers in *London*, or forfeits the same or Value thereof.

Hides not to be gashed.

If any Hides shall be gashed by the Currier in shaving, such Currier shall forfeit to the Party grieved double Damages; and if spoiled or impaired, the Forfeiture is 6s. 8d. besides the Value of the Hide or Skin.

Nor bought rough in the Hair, but by Tanners; nor watered.

Hides must not be bought rough in the Hair by any Persons but Tanners (except Salt Hides for the Use of Ships) on Pain of forfeiting the Hides, or the Value: Or watered, except in the Months of *June*, *July* and *August*, on forfeiting 3s. 4d. for every Hide; and if tanned Leather be bought at any other Place but in Fair and Markets, there is a Forfeiture of 6s. 8d. per Hide.

Tann'd Leather must be bought in Fair or Market.

Tanning unsound Leather, &c. the Forfeiture.

If any Person tan unsound Hides, or Sole-Leather not continued Twelve Months in the Wooses, and Uppet Leather Nine Months, or shall neglect to work Hides in Woofe, or not renew and strengthen them, he shall forfeit every Hide so tanned and put to sale? The same Forfeiture if he shall raise Hides for Sole-Leather by any Mixture; and if a Tanner hastneth the Tanning by any unkind Heats with hot Water, he forfeits 10l. and shall stand in the Pillory in the next Market-Town on three Market-Days. 1 Jac. 1. c. 22.

What Hides esteemed Leather.

Hides or Skins of Ox, Steer, Bull, Cow, Calf, Deer, Goat and Sheep tanned or tawed, and Salt Hides are reputed Leather within the Act 1 Jac. 1. c. 22. And if a Tanner shall over-lime Hides, or use any Thing but the Bark of Ash or Oak, Culver-dung, or Hen-dung, Lime, Malt, Meal, Tapwort, he shall forfeit every Hide; and if he shall suffer Hides to be frozen, or parched with Fire or the Sun, the Forfeiture is the same.

Materials in Tanning.

If any Leather shall be put to Sale not being sufficiently tanned and dried, the Person exposing it to Sale, shall forfeit the same. And if any Person shall buy any tanned Leather before it be searched and sealed, or shall carry out of the Fair or Market before it is registred, he shall forfeit 5l. to be divided into three Parts, in *London*; one to the Seisor of the Leather, another to the Chamber

Leather not well tanned and dried; searched and sealed, &c.

Forfeiture.

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*London*; and the Third to the Poor; to be recovered in the Quarter-Sessions. 1 Jac. 1. c. 22.

The Mayor and Aldermen of *London* are to choose and swear yearly eight expert Men out of some of the Companies of Shoemakers, Curriers, Girdlers, and Sadlers, to be Searchers and Sealers of all tanned Leather (one of which Number is to be Seal-keeper) on Pain of forfeiting 40*s.* to be divided between the King and Prosecutor. And Head Officers in Corporate and Market Towns, and Lords of Liberties and their Stewards are to appoint and swear yearly two at the least, honest and skilful Men, to be Searchers and Sealers of Leather, on the like Forfeiture of 40*s.* And Searcher or Sealer refusing to execute the Office, forfeits 10*l.* 1 Jac. 1. c. 22.

Searcher or Sealer refusing to do his Duty in convenient Time, or approving insufficient Wares, is liable to the Forfeiture of 40*s.* and if a Searcher or Sealer shall take any Bribe, or exact more than the Fees which belong to his Office, he shall forfeit 20*s.* to be divided into three Parts, as above, in case Leather shall be bought before it shall be searched and sealed, &c. And if any Person hinder the Searcher or Sealer in the Execution of their Office, he forfeits 5*l.*

If any Person shall sell tanned Leather (red or unwrought) before it be registred, he shall forfeit the Value thereof, to be divided into Thirds, *ut supra*.

And in *London* the Master and Wardens of the Companies of Shoemakers, &c. are to make a Search every Quarter of a Year at least, and view all Wares made of tanned Leather, and have Power to seise all insufficient Leather; and if they neglect to make such Search, they shall forfeit 40*s.* for every Year's Default. 1 Jac. 1. cap. 22.

Searchers, &c. must register tanned Leather sold in Markets, &c. with the Prices thereof, and the Names of Buyer and Seller, taking of each 2*d.* for ten Hides, and 2*d.* for every six Dozen of Calves or Sheep Skins.

There are six Persons in *London* appointed by the Lord Mayor, &c. and in other Places by the Chief Officer, upon Oath, to be Triers within fifteen Days after Seizure, &c. By whom Triers are appointed, &c.

Persons not appointing, and Triers neglecting their Duties, forfeit 5*l.* for every Default.

Four of the Triers in *London* shall be removed every Year, and others put in their room; and none shall be in that Office above two Years, and afterwards shall not be chosen again within three Years; Forfeiture for every Month otherwise continuing in the Office 10*l.*

Searcher, &c. refusing to do his Duty, how punished.

One hindring a Searcher in his Office, forfeits 5*l.*

Wares made of Leather to be viewed every Quarter of a Year,

If any Person expose to Sale tanned Leather unwrought, unless in a Fair or Market, not searched and sealed before, or shall offer to sell any such Leather before it be searched and sealed, he forfeits 6 s. 8 d. for every Hide, and 3 s. 4 d. for every Dozen of Calf-Skins or Sheep-Skins, besides the Hides and Skins themselves.

The Forfeiture for forestalling Hides.

If any Person shall forestall Hides, or buy them otherwise than in open Fair or Market, he shall forfeit 6 s. 8 d. *per* Hide; and if any Person shall buy rough Hides or Calves Skins in the Hair, except such as can lawfully tan them, he shall forfeit them, or the Value.

When Trees are to be cut down for Bark.

Where Oak-Trees are felled, which will produce Bark, when the Bark is worth 2 s. a Cart-Load, (except Timber for Repairs of Houses, Ships, &c.) if the Fellers shall cut them down at any other Season in the Year but between the First Day of *April* and the Last Day of *June*, they shall forfeit the Trees, or double the Value of them.

Ingrossing Bark.

1 *Jac.* 1. c. 22. And if any Person shall engross Bark with Intent to sell the same again, he shall forfeit the same, or the Value.

Curriers making up Leather before it be searched.

If a Currier in *London* makes into Wares any curried Leather before it be searched and sealed, he shall forfeit 6 s. 8 d. for every Hide and Skin, and the Value of every such Hide and Skin. 1 *Jac.* 1. c. 22.

Currier not to use the Trade of Tanner, Shoemaker, &c.

And if a Currier shall use the Art of a Tanner, Shoemaker, Butcher, or any other Trade which depends upon cutting of Leather, he shall forfeit 6 s. 8 d. for every Hide and Skin he shall cut. 1 *Jac.* 1. c. 22.

Leather to be sold in open Shop, Market, &c.

Artificers concerned in Leather-selling any where but in open Shop or Market, &c. where due Search may be made, shall forfeit the Wares, and 10 s. for every Offence.

Currier not doing his Duty, how punished.

If a Currier in *London* shall not curry his Leather well, he shall forfeit the same, or the Value. And if a Currier shall buy tanned Leather, and curry it, and sell the same to a Shoemaker not cut out, he is punishable. 1 *Cro.* 425.

By Statute 9 *Ann.* c. 11. A Tanner or other Person shaving or causing to be shaved Hides or Calf-Skins before they are tanned, whereby it shall be impaired, or the Duty diminished, he shall forfeit such Hides or Skins or the Value, by Warrant from two Justices, to be levied by Distress; but such Justices have Power to mitigate the Penalty, so as the same be not reduced to less than a fourth Part, besides the Costs and Charges in the Prosecution. Prosecution must be in three Months.

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All Tanners, Curriers, Tawers, Leather-Dressers, Tanners, &c. Hide-Dressers, Makers of Vellum and Parchment, are to give in their Names, and where their respective Names and Places of Abode, Tan-Houses, Tan-Yards lie, Yards, Work-Houses, Mills, or other Places for Tanning, Tawing, or Dressing any such Hides or Skins, or shall forfeit 50*l.* to the King and Informer, subject to Mitigation, *ut supra*. And if Owners or Occupiers of such Tan-Yards, &c. refuse the proper Officer Entrance, they forfeit 50*l.*

If any Tanner, Tawer, Currier or Dresser of Hides, &c. shall use any private Tan-yard, &c. or shall not give timely Notice of taking the Hides, &c. out of the Wooze, or do not make Entries of Hides, &c. or shall remove or carry away the same, or any Part thereof; or hide, or conceal any Skins, &c. he shall forfeit 20*l.* and the Skins, &c. but the Penalty may be mitigated, as above.

If any Tanner, &c. shall not keep just Scales and Weights, or shall not permit, or shall neglect to bring to be weighed, or to assist at the weighing or removing Hides, &c. before the Duties are charged, and the Skins, &c. marked, he shall forfeit 50*l.* subject to Mitigation, &c.

Tanners, &c. not paying the Duty with which Hides and Skins are chargeable, shall forfeit double the Duty. And if they shall send, deliver, or carry out any Hides, &c. before the Duty is paid, they shall forfeit double the Value of such Hides so delivered, &c. but liable to Mitigation.

Tanners, &c. not accounting with the proper Officer once in three Months, shall forfeit 30*l.* but may be mitigated, *ut supra*.

If any Officer shall take any Fee or Reward for Entries, Accounts, Permissions, Certificates, Marks or Receipts, he shall forfeit five Pounds to the Party grieved.

One Justice hath Power to administer Oaths to Tanners, &c. of their making Entries, and giving Notice, &c. to Officers, and also to administer Oaths to Officers for the Duties on Hides, &c. before they act.

By the Act 1 Jac. 1. c. 22. Exportation of Leather was prohibited, but by 20 Car. 2. c. 5. it was made lawful, paying for every Hundred Weight 12*d.* which Act was revived by 1 W. & M. c. 3. and 7 & 8 W. 3. cap. 36.

The Money forfeited by 1 Jac. 1. c. 22. must be divided into three Parts, *viz.* between the King, Prosecutor, and Corporation, or Lord of the Liberty.



The Value of the Wares, if within the Jurisdiction of *London*, into three Parts, *viz.* between the Seisor, Chamber of *London*, and Poor; and in all other Places between the Seisor, Head Officer, and to charitable Uses.

Two Justices may hear and determine; but Appeal lies to the Quarter-Sessions.

Two Justices may hear and determine Offences against both the said Acts by summoning the Party accused, and the Witnesses on either Side, and examining them on Oath; but the Prosecution must be within three Months after Seizure, for the Offence committed; and an Appeal lies to the Sessions, and no *Certiorari* shall be allowed; yet the Justices may mitigate the Forfeiture, so as the Charges of Prosecution be allowed over and above such Mitigation; and so as the Penalty be not reduced to less than a fourth Part.

*N. B.* That Commissioners on this Statute have the same Power as Commissioners of Excise; and all Commissioners and Officers are liable to the same Disabilities and Forfeitures as in 9 & 10 *W.* 3. c. 24.

*N. B.* Stat. 10 *Ann.* c. 26. lays Additional Duties on Hides, &c.

Officers to mark the Hides as Tanner desires.

By the aforesaid Stat. 9 *Ann.* c. 11. it is enacted, that after the Duty is paid, and Entry thereof made in the Officer's Book, he shall cause every Hide and Skin to be marked in such Place as the Tanner desires; and if removed from the Yard or Drying-Place by the Tanner, &c. or if any Buyer shall carry it from thence before it shall be marked, they shall respectively forfeit 50*l.* for each Offence; one Moiety to the Crown, the other to the Informer, and the Skins are forfeited to the Crown. 9 *Ann.* cap. 11.

And no Information shall be brought in the Courts at *Westminster*, in Cases where these Offences are cognizable by the Justices; and no *Certiorari* shall be allow'd to remove their Proceedings; but their Determination shall be final.

Curriers not to buy nor sell by Wholesale.

A Currier bought two Hides of tanned Leather of Persons unknown; and after curried them with Oil and Tallow, and other Things necessary; and after shaved and dyed them, and so being wrought sold them. The Court held that this is a Buying and Selling by Wholesale; and a Currier may not buy nor sell by Wholesale, within the Statute 1 *Jac.* 1. c. 22. *Trin.* 16 *Car.* 1. *Cro. Car.* 587. *Jones's Rep.* 467. *Lodge ver. Hollowel.*

An Information against a Person not being a *Tanner*, for buying raw Hides and selling them again not tanned.

Essex, *J.* **B**E it remembred, that (such a Day and Year) *Jac. 1. c. 22.*  
*A. B. who as well, &c. comes into this Court; and gives this Court to understand and be informed, that one L. M. of C. in the said County, Shoemaker, on the 18th Day of March last past, before exhibiting this Information at C. in the said County, bought of divers Persons, whose Names are unknown to the said A. B. who as well, &c. twenty raw Hides, each thereof at the Price of 6 s. 8 d. he the said L. M. then not being a Tanner, or a Person who lawfully might tan, which said Hides were not made for the necessary use of Ships, against the Form of the Statute in such Case made and provided; whereby the said L. M. forfeited (so much) of lawful Money, that is to say, the Value of the said Hides; whereupon the said A. B. as well for our said Sovereign Lord the King, as for himself, prays the Advice of the Court in the Premisses, and that the said Forfeiture be divided into three equal Parts, according to the Form of the Statute aforesaid, and that he the said A. B. who as well, &c. may have one Part thereof, according to the Form of the Statute aforesaid.*

A Warrant to levy the Forfeiture for buying Leather before it be searched and sealed.

Essex, *J.* **W**Hereas *A. B. of, &c. hath this Day made* *Jac. 1. c. 22.*  
*Oath, that on, &c. last past, he saw C. D. of, &c. Shoemaker, in the Fair or Market of, &c. buy of, &c. two Hides of Neats-Leather, which Leather was not searched and sealed according to the Statutes; whereby the said C. D. has forfeited the Sum of 5 l. These are therefore to require you to levy the said Sum of 5 l. by Distress and Sale of the Goods and Chattels of the said C. D. and that you do dispose of the same according to the Direction of the Acts of Parliament in that Case made. Given, &c.*

A War-

### A Warrant to levy the Forfeiture for resisting a Searcher or Sealer in the Execution of his Office.

1 Jac. 1. c. 22. Essex, ff. **W** Hereas A. B. of, &c. Searcher and Sealer of Leather within the Liberty of, &c. hath this Day made Information on Oath before us, that C. D. of, &c. Tanner, did on, &c. last past, resist and abuse the said A. B. at, &c. in the Execution of his Office, inso-much that he was not able to proceed in his Business, but was forced thro' violent bad Usage, to quit the same, contrary to the Act of Parliament in that Case made and provided: These are therefore to command you to levy the Sum of 5 l. on the Goods and Chattels of the said C. D. which he hath forfeited by the Offence aforesaid. Given, &c.

### A Warrant against a Shoemaker for using bad Leather.

1 Jac. 1. c. 22. Essex, ff. **W** Hereas A. B. of, &c. Gent. hath this Day given Information to us, that C. D. of, &c. Shoemaker, lately sold him one Pair of Boots and two Pair of Shoes, which are not only slightly sewed, but also made of bad and insufficient Leather, whereby they have done the said A. B. little or no Service, to the Deceit of the said A. B. and contrary to Law: These are therefore in his Majesty's Name to command you to levy the Sum of 3 s. 4 d. on the Goods and Chattels of the said C. D. by Distress and Sale thereof, which he hath forfeited by the Offence aforesaid. Given, &c.

### A Warrant to levy the Forfeiture of a Tanner, for using a private Tanyard to defraud the King of his Duty.

9 Annæ, c. 3. Essex, ff. **W** Hereas A. B. of, &c. Officer for charging the Duty on Leather, has this Day made Oath before us, that C. D. of, &c. Tanner, hath lately made Use of a private Tan-yard for Tanning of Leather, in the Parish of, &c. without giving any Notice of the said Tan-yard, or making any Entry of the Hides there tanned, to the Defrauding the King of his Duty for such Leather; whereby he is liable to the Penalty of 20 l. But



as we have Power to mitigate such Penalty, so as the same be not reduced to less than one fourth Part of the said Penalty, besides the Costs and Charges of the Prosecution; we do hereby mitigate the said Sum of 20l. to the Sum of 7l. And these are in his Majesty's Name, to command you to levy the said Sum of 7l. which he hath forfeited by the Offence aforesaid, by Distress and Sale of the Goods and Chattels of the said C. D. and that you do pay the same to the said A. B. as the Prosecutor. Given, &c.

A Warrant to levy the 50l. or the mitigated Penalty, for carrying away from the *Tanner's* Yard Skins before they were mark'd by the proper Officer.

Effex, ff. **W** Hereas Complaint hath been made unto us 9 Annæ, c. 8. A. B. and C. D. two of His Majesty's Justices of Peace for the said County, and both of us residing near the Place where the Offence herein after-mentioned was committed, that L. M. of, &c. did on the 30th Day of this Instant July \* carry away from the Tan-yard, \* Or as the Offence is. of R. C. in, &c. two Calve-Skins before the same were marked by the proper Officer, for that Purpose appointed, and contrary to the Statute in that Case made and provided: We did therefore command the said L. M. to appear before us on the Day of the Date hereof, at the House of P. S. in M. &c. commonly known by the Name of the Red-Lion, where he did appear accordingly: And we upon Examination of Witnesses and due Proof thereof made on Oath, did then and there adjudge the said L. M. to be guilty of and in the Premises, by Reason whereof he hath forfeited 50l. We do therefore require you forthwith to levy the Sum of 25l. upon the Goods and Chattels of the said L. M. to which last Sum we have mitigated the aforesaid Forfeiture of 50l. And if the Goods so taken shall not be redeemed within six Days afterwards, that then you sell the same, and pay one Moiety of the 25l. to the King, and the other Moiety to R. B. who first informed us of the said Offence, deducting 5l. for his Charges in the Prosecution hereof. Given, &c.

Lect.

## Leet.

Before the  
Conquest.

**T**HIS is a Court of Record, and derived out of the Sheriff's Tourn for the Ease of the People within particular Districts, and that they might not be at the Charge or Loss of Time to travel to the Sheriff's Tourn. It was therefore granted by the King to particular Lords, who were to view the Tenants and Resiants at certain Times in their Manors; and from hence 'tis called *Curia visus franci plegii*.

Before Leets  
every Man  
sworn in the  
Sheriff's Tourn.

Before the Institution of the Leet, every Freeman when he was twelve Years old, was bound to take the Oath of Allegiance in the Tourn; and after the Leet was established, then he was bound to take it within that particular Precinct; and if he could not then find Pledges for his Truth to the King and the People, he was to be committed till he could.

Frank Pledges  
what.

These Pledges, or free Pledges, consisted of ten Families, the Masters whereof were bound for one another and their Families, that each Person therein should stand to the Law; and if he was not to be found, that then they should answer for any Injury he had done.

To consist of  
ten Families.

And these were the Pledges the Lord or his Steward were to view in the Leet, which comprehended those ten Families and no more; but afterwards the Authority of the Leet was enlarged by many Statutes.

Steward may  
commit for an  
Affray.

A Steward of a Leet cannot grant Surety of the Peace, unless by Prescription; but he may commit those who make an Affray before him in the Execution of his Office, or bind them to the Peace or Good Behaviour.

He may take a Presentment of an Offence against the Peace.

In every Leet there ought to be a Pillory and Tumbrel, or the Lord of the Leet shall be fined to the King.

Steward ought to give the Stat. of 1 *Eliz. c. 17.* concerning Fish, in Charge, or forfeits 40*s.* between the King and Prosecutor.

Stewards can-  
not amerce for  
any thing  
but publick  
Nusances.

He cannot amerce for any thing but publick Nusances, nor for particular Trespasses either against the Lord or any other Person; for if he doth, an Action lies against him, 1 *Saund. 135. Raym. 160.*

Letter. See Libel and Post-Letters.

Lewyns.

## Lewdness.

IN former Times there were eighteen Bawdy-Houses, which were publickly known and allowed, on the Bank-side in *Southwark*. King *Hen. VII* reduced the Number to twelve; and his Son *Hen. VIII*, in the 37th Year of his Reign, by his Proclamation wholly suppressed them, since when they have ever continued so.

And now at this Day, any Constable, upon Information that a Man and a Woman are about to commit Fornication, or Adultery; or that they are gone to any Lewd House, may, if he find them there together, carry them before a Justice of the Peace, without any Warrant; and the Justice may bind them to the good Behaviour. *Dalt.* 214.

If a Man is indicted for frequenting a Bawdy-house, it must appear that he did know it to be such a House; and it must be expressly mention'd in the Indictment, that 'tis a Bawdy-House, and not that 'tis only suspected to be such. *Popham* 208.

The Court agreed, that if a Lodger, who has only a single Room, will therewith accommodate lewd People to perpetrate Acts of Uncleaness, she may be indicted for keeping a Bawdy-house, as well as if she had the whole House. *1 Salk.* 382.

Indictment against the Defendant, for that she was *communis lena, ac male dispositas personas in domibus lupanaribus convenire, & scortationes & fornicationes committere pro lucro proprio illicite procuravit*: On Not Guilty pleaded, the Defendant was convicted, but it was revers'd upon a Writ of Error: For tho' an Indictment will lye for keeping a Bawdy-House, it will not lye for being *communis lena*, nor for a Sollicitation of Chastity.

If a Woman and her Husband separate for her Adultery, or any other Cause, and she hath a separate Allowance, he who trusts her after a publick Notice of the Separation, trusts her upon her own Credit, for the Husband is not answerable. Husband not bound to pay Wife's Debts after Separation.

An Indictment for being a Bawd only, not good. *1 Salk.* 382.

A Constable in *London* being informed *A. B.* was at a House committing Adultery with another Mans Wife; he went to the House with several to assist, and arrested him, and carried him to the Compter. *A. B.* brought an Action of false Imprisonment, to which the Constable pleaded, that in *London* there was a Custom on Information to seize such Offenders, &c. In this Case *Townsend* declared,



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He may take a Presentment of an Offence against the Peace.

In every Leet there ought to be a Pillory and Tumbrel, or the Lord of the Leet shall be fined to the King.

Steward ought to give the Stat. of 1 *Eliz. c. 17.* concerning Fish, in Charge, or forfeits 40*s.* between the King and Prosecutor.

Stewards cannot  
amerce for  
any thing  
but publick  
Nuisances.

He cannot amerce for any thing but publick Nuisances, nor for particular Trespass either against the Lord or any other Person; for if he doth, an Action lies against him, 1 *Saund. 135. Raym. 160.*

Letter. See Libel and Post-Letters.

Lewyns.

## Lewdness.

**I**N former Times there were eighteen Bawdy-Houses, which were publickly known and allowed, on the Bank-side in *Southwark*. King *Hen. VII* reduced the Number to twelve; and his Son *Hen. VIII*, in the 37th Year of his Reign, by his Proclamation wholly suppressed them, since when they have ever continued so.

Publick Bawdy-Houses suppressed.

And now at this Day, any Constable, upon Information that a Man and a Woman are about to commit Fornication, or Adultery; or that they are gone to any Lewd House, may, if he find them there together, carry them before a Justice of the Peace, without any Warrant; and the Justice may bind them to the good Behaviour. *Dalt.* 214.

Constable on Information of lewd People being together, may carry 'em before a Justice.

If a Man is indicted for frequenting a Bawdy-house, it must appear that he did know it to be such a House; and it must be expressly mention'd in the Indictment, that 'tis a Bawdy-House, and not that 'tis only suspected to be such. *Popham* 208.

The Court agreed, that if a Lodger, who has only a single Room, will therewith accommodate lewd People to perpetrate Acts of Uncleaness, she may be indicted for keeping a Bawdy-house, as well as if she had the whole House. *1 Salk.* 382.

Indictment against the Defendant, for that she was *communis lena, ac male dispositas personas in domibus lupanaribus convenire, & scortationes & fornicationes committere pro lucro proprio illicite procuravit*: On Not Guilty pleaded, the Defendant was convicted, but it was revers'd upon a Writ of Error: For tho' an Indictment will lye for keeping a Bawdy-House, it will not lye for being *communis lena*, nor for a Solicitation of Chastity.

Indictment against a common Bawd, and Judgment revers'd on a Writ of Error.

If a Woman and her Husband separate for her Adultery, or any other Cause, and she hath a separate Allowance, he who trusts her after a publick Notice of the Separation, trusts her upon her own Credit, for the Husband is not answerable.

Husband not bound to pay Wife's Debts after Separation.

An Indictment for being a Bawd only, not good. *1 Salk.* 382.

A Constable in *London* being informed *A. B.* was at a House committing Adultery with another Mans Wife; he went to the House with several to assist, and arrested him, and carried him to the Compter. *A. B.* brought an Action of false Imprisonment, to which the Constable pleaded, that in *London* there was a Custom on Information to seize such Offenders, &c. In this Case *Townsend* declared,

declared, That Adultery is a Thing Temporal as well as Spiritual, and against the Peace of the Land ; and that the committing of Adultery with a Man's Wife, is a greater Breach of the Peace, than entering his House and robbing him : And *Catesby* also agreed, that at Common Law it is a Breach of the Peace. *Hill. 1 Hen. 7. fol. 6 & 7.*

A Woman in *B.* kept a common Bawdy-House, and *A. C.* resorted thither, and kept Company with lewd Women ; the Constable with others to assist him at Midnight, arrested *A. C.* in the Bawdy-House for Breach of the Peace. *A. C.* brought an Action of false Imprisonment, and the Constable pleaded the said Matter in Justification ; and it was allowed by all the Judges to be a good Justification. *Mich. 13. Hen. 7.*

*M. S.* was indicted at the *Old Baily*, for that *carnaliter cognovit A. W.* an Infant under the Age of ten Years ; and because upon Evidence to the Jury, it was not proved, that he entred the Child's Body (but the contrary) altho' he very much abus'd her, the Jury wou'd not find him Guilty of the Felony. But by the Advice of Judge *Jones* and Judge *Berkley*, he was indicted of Battery for abusing the Infant in lying with her, and was convicted and adjudged for this Misdemeanor, to be committed to Prison, there to abide during the King's Pleasure, fined 200 Marks, to stand upon the Pillory in *Chancery-Lane* in *Middlesex*, near the Place where the Fact was committed, with a Paper upon his Head signifying the Cause, and to be bound with able Sureties to the good Behaviour during Life.

### Indictment for keeping a Bawdy-House.

*Essex, ff.* **T**HE Jurors, &c. do present, That *T. P.* (such a Day and Year) and at divers Times before and after, at *L.* in the said County, held and kept, occupied, and frequented in his House there, Common of Luxury and Fornication, and permitted other Persons suspicious, and not of a good Behaviour nor Character, to lie Carnally (or commit Whoredom with Harlots) to the great Nuisance of all the People of our Sovereign Lord the King, dwelling near thereunto, and to the ill Example of all other Offenders in the like Case, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

Liberties



## Liberties and Franchises.

**A**RE such which have Return of Writs, and not such which are Counties of themselves; as *York*, *Bristol*, &c. not Towns which have Justices of Peace by Charter, or Grant of the King, so that no other Justices meddle there without a concurrent Commission from the King. But a Justice of Peace may execute his Authority within any Liberty in his County, not being a County of it self; and it is good. 2 & 3 P. & M. c. 18.

Liberties and Franchises what.

Franchises are sometimes put into the King's Hands, sometimes seised in his Right till Fine made, sometimes forejudged. 9 Co. 28. 2.

Seised for Default of Answer, for not being at the Cost to sue out a Commission of Gaol-Delivery, for Prisoners whom the Gaoler detains. 9 Co. 96. b. So detaining Prisoners after the Fees paid.

Franchises sometimes seised into the King's Hands, and sometimes fined; as in Dr. Lamb's Case in London.

Liberty seised for grand Riot, in Cities and Corporations, fined, as it happened in *London*, in the Case of the Riot where Dr. *Lamb* was killed, the City was, upon Information in *B. R.* fined a Thousand Marks. P. 8. Car. 1.

A Franchise within a Hundred is chargeable for a Robbery with the Hundred. 27 Eliz. 13.

## Libellers and Libels.

**A** LIBEL (in this Place) signifies a scandalous Report raised and spread abroad of another, or otherwise unlawfully published. What is a Libel.

And this may be either in Writing or without it; if in Writing, the Making a Copy thereof and Delivering that Copy to another is a Publication; and so is repeating it to others after a Man hath heard the same read, or reading it to another, knowing it to be a Libel. In Writing.

If without Writing, then it may be by Pictures or Representations; as to paint a Man like a Fool, or by Sign; as to fix a Gallows, or any other shameful and ignominious Sign at the Door of a Person. 5 Rep. Or without Writing.

Authors of Libels may be punished by Indictment, and fined, or by an Action on the Case, where the Words will bear Authors of Libels, how to be punished.

bear an Action. And if it be against a private Person, it ought to be burn'd or carried to a Magistrate; and if it be against any Person in Office, or Magistracy, and much more if it be against the Government, it ought to be delivered to some Magistrate, that the Offender may be found and punished. *5 Rep. 59.*

A Man may be indicted at the Sessions for writing a scandalous Letter concerning a private Person, as it tends to the Breach of the Peace. And if a scandalous Letter be directed to the Party himself, and not to a third Person; this tends to the Breach of the Peace, and may be punished by Indictment or Information; but no Action on the Case will lye, because 'tis no Publication. *1 Lev. 139. Moor 627, 821. Hob. 62.*

Libel found in a House, Master not to be punished.

If a Libel be found in an House, the Master or Owner thereof cannot be punished in an Information for composing, printing, or publishing it; but it is said he may be indicted for having it, and not delivering the same to a Magistrate. *1 Vent. 31.*

To libel any private Person is an Offence; but to libel a Magistrate is a greater; but the greatest of all is to libel the Government. *1 Leon. 287.*

Case of Libelling private Persons.

As to private Persons, if a Man shall write libellous Letters, and disperse them in the Fields, without sending any to the Person himself, this is punishable as a Libel, tho' the Matter contained in them be true, as it is not to be justified in an Information. But if an Action on the Case be commenced for printing and publishing a false and malicious Libel, the Defendant may justify that it was true. *Moor 627. Hob. 120. Hob. 153. Hardres 470.*

Case of Libelling Magistrates.

As to Persons in Office: A Man affirmed that my Lord Chancellor *Bacon* had done Injustice, and spoke other scandalous Words of him; for which he was sentenced to pay 1000 *l.* Fine; to ride on a Horse with his Face to the Tail, from the *Fleet* to *Westminster*, with his Crime written on his Head; to acknowledge his Offence in all the Courts at *Westminster*; to stand in the Pillory; and that one of his Ears should be cut off at *Westminster*, and the other in *Cheapside*; and to suffer Imprisonment during Life. *Poph. 135.*

Case of Libelling the Government.

Information against the Defendant for causing a scandalous Libel to be framed, printed, and published. Upon Not Guilty pleaded, the Evidence was, That upon Search of the Defendant's Lodgings, by a Warrant from a Secretary of State, two of the Libels were there found. Adjudged that tho' the Defendant could give no Account how he came by them, yet this was no Crime within

within them.

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within the Information, unless he had maliciously published them. i Vent. 31.

A Man was indicted for saying that *Campion* was not executed for Treason, but for Religion; and that he was as honest a Man as *Cranmer*; but the Jury did not find whether the Words were spoken *Malitiose & Seditiose*; and so the Defendant was discharged.

A Man may justify in an Action on the Case for a Libel, but not against an Indictment for it. *Hob. 120, 253. Moor 627.*

If I hear a Libel read, and only laugh at it, however I may seem to approve of it, yet that will not amount to a Publication.

Where one did pronounce, dictate, and repeat the Words, and the other did write them, the Question was, Whether the Writer should be guilty of composing and making the Libel? It was insisted that he should not; for if he should, then every Man who writes a Libel, must make and compose it; but adjudged that he who dictates, and he who writes the Libel, are both guilty; because the Writing shews an Approbation of the Libel dictated; and they are both Makers of it: For all, who concur in an unlawful Act, are guilty. *5 Mod. 165.*

Indictment for composing, writing, making, and collecting several Libels, in one of which it was contain'd *juxta tenorem & effectum sequent'*. The Defendant was found guilty as to the Writing and Collecting, and not guilty as to the last. Adjudged that the Copying a Libel without Authority is writing a Libel: And he who thus writes is a Contriver of the Libel; and when the written Copy of a known Libel is found upon him, it is an Evidence of the Publication of it.

But if such Publication be not publickly known, then the bare having a Copy is no Publication. That there is a Difference between *tenor* and *effectus*; for if this Indictment had been *juxta effectum sequent'*, it had been brought; because the Court is to judge of the very Words, and not of that Construction which is made by the Prosecutor: For the Tenor of a Thing is the Transcript, and imports the Words themselves. *2 Salk. 417. Hob. 62. Het. 4. Moor 421.*

A Man was a Suitor to a rich Widow, and the Defendant wrote a Letter to her, advising her not to marry him, for he was a debauched Person, and had the Pox, and was not worth a Groat; and that he declared if she married her, then he would allow 50 *l. per Ann.* to a Whore. This Letter was conveyed to the Widow, but not

Laughing on hearing a Libel read, no Publication. He who dictates, and he who writes the Libel, are both guilty.

Written Copy of a known Libel, an Evidence of the Publication of it.

One for a Libel on a private Person fined 200 *l.* 2 Sessions.



One punished  
for Libelling  
Lord C. J.  
Coke.

So for Libel-  
ling Judge  
Hutton.

Tenor implies  
a true Copy.

Two Ways of  
describing a  
written Libel.

Libellers may  
be bound to  
their Good  
Behaviour.

subscribed by the Defendant; but upon Evidence it appeared to be his Writing. He was fined 200*l.* at Sessions. *Sid.* 270. *Lev.* 139.

One *Jeffs* libelled my Lord *Coke* for the Judgment in *Magdalen College Case*, by writing that it was Treason, and he a Traitor, and perjured Judge. This he fixed on the Gate of *Westminster-Hall*; for which he was sentenced to stand in the Pillory with a Paper, &c. and to be committed till he made his Submission in every Court. He was also to find Sureties for his Good Behaviour for Life, and to pay 1000*l.* to the King. *Cro. Car.* 175.

A Man who was angry with Judge *Hutton* for his Argument about Ship-Money, came into the Court of Common Pleas, sitting the Court, and said, I accuse Mr. *Justice Hutton* of High Treason; and he was fined 5000*l.* and imprisoned during the King's Pleasure. *Sid.* 213.

Information for writing a Libel against the Government, in which there was a Sentence wherein the Word (nor) was mistaken for (not); and this being found Specially, it was adjudged that Tenor implies a true Copy, which this was not; because (nor) differs from (not) both in Grammar and Sense: And no Man can swear that the Libel set forth in the Information is a true Copy of the written Libel.

There are two Ways of describing a written Libel, either by the Words or Sense. The first is *cujus tenor sequitur*, or *quæ sequuntur in his Anglicanis verbis*, in which the Description is by particular Words; and of which every Word is a Mark: So that if there is any Variance, it is fatal. The other Description is by the Sense; and that is to set forth in the Information, that the Defendant made a Writing, and therein wrote so and so, translating it into *Latin*, in which it is not material to be very exact in the Words, because the Matter is described by the Sense of them.

To say of a Justice of Peace, that he is not fit to talk Law, is indictable and fineable at Sessions, as a Libel. 3 *Mod.* 139.

Libellers (it seemeth) may be bound to their Good Behaviour, as Disturbers of the Peace, whether they be Contrivers, Procurers or Publishers of the Libels; for such Libelling and Defamation tendeth to the Raising of Quarrels and Effusion of Blood, and occasions Breaches of the Peace. *Dalt.* 294. 9 *Co.* 59. b.

So if one, that hath heard it read, repeat any Part, or read it to another knowingly. *Ibid.*

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So by a scandalous Letter subscribed by his Name, being full of slanderous Matter. 12 Co. 35.

And it is not material, whether the Libel be true or false, the Party scandalized living or dead, of good or ill Name. *Ibid.*

S. published a libellous Letter, scandalous to M. before a Woman M. intended to marry; for which he was indicted before the Justices of Peace at Guild-Hall, London, and Judgment against him. S. brought a Writ of Error, and two Errors were assigned. 1. That it was but a private Letter and not punishable by Indictment. 2. If it be, yet not before Justices of Peace, but before Commissioners of Oyer and Terminer, who have Words in their Commission *de propalationibus verborum*. Tho' Twysden, Kelynge, and Wyndham, held that he was indictable, because it tended to a Breach of the Peace, and before Justices of Peace, as well as Justices of Oyer and Terminer. Mich. 16 Car. 2. B. R. The King against Summers and Summers, 1 Sid. 270.

S. writ a scandalous Letter to Hatton Rich, Brother to the Earl of Warwick, who was indebted to him 300 l. after Rich had obtained a Protection, and at last taken the King's Bench Prison. In which Letter were these Words, [That if he had any Honesty, Civility, Sobriety, or Humanity, he would not deal so by him; and that he would one Day be damn'd and be in Hell for the Cheating,] or Words to the like Effect; and quoted several Places of Scripture to make good the Allegations: The Court of B. R. judged this Letter Scandalous, being provocative, and tending to the Breach of the Peace; and S. was fin'd 40 Marks. Mich. 22 Car. 2. B. R. Raym. Rep. 28. Rex ver. Saunders.

It is all one if Libel be true or false.

Libels cognizable before Justices of Peace.

Case of a Libel against Earl of Warwick's Brother.

## Indictment for a Libel against a Justice of Peace.

Essex, ss. **T**HE Jurors, &c. do present, That whereas on the Fourth Day of July, (in such a Year) at C. in the County aforesaid, the Gaol of our said Sovereign Lord the King, on the General Quarter-Sessions of the Peace then and there held before Sir A. B. and D. E. Barts. and others their Brethren, Justices assigned to keep the Peace in the said County, and also to hear and determine divers Felonies, Trespasses, and other Offences committed therein, was delivered of certain Prisoners in the said Gaol, then and there indicted, rightly and according to the

## Libraries Parochial.

*Laws and Customs of this Kingdom of England; nevertheless one C. D. late of L. in the said County, Yeoman, not being Ignorant of the Premises, but contriving and intending to bring the said Justices into great Scandal and Infamy, afterwards (to wit) (such a Day and Year) at [L. aforesaid, in the County aforesaid, maliciously made and published a certain scandalous Libel in Writing, to Defame the said Justices, containing among other Things these false and scandalous Words following, (to wit) [setting forth the Words] whereas in Truth [setting forth that the Words were false] against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and contrary to the Form of the \* Statute in such Case made and provided, &c.*

21 W. c. 24.

## Libraries Parochial.

Several Parochial Libraries having been erected by charitable Contributions, Care has been taken by a late Act of Parliament of 7th of Queen Anne, c. 14. to preserve the same.

Incumbent to enter into Bond.

By which Act every Incumbent, before he shall be permitted to use such Library, must enter into a Bond, to be approved by the proper Ordinary, conditioned for the Preservation of the Library; and to observe the Rules and Orders belonging to the same.

If a Book taken away, Ordinary may bring Action.

And if any Book shall be taken away or detained, the Incumbent, or any other Person, may bring an Action of *Trover* in the Name of the proper Ordinary, and shall recover treble Damages with full Costs; which Damages shall be applied to the Use of the Library.

May inquire in his Visitation.

The said Ordinary, or his Commissary, or his Official, or the Archdeacon, or his Official, or Surrogate, (if the said Archdeacon is not Incumbent of the Place where the Library is) may inquire in their Visitations, of the State of such Library, and the Ordinary may appoint any Person to view it.

Incumbent must make a Catalogue within six Months.

And where a Library is appropriated to the Use of the Incumbent, he must within six Months after his Induction, make a new Catalogue of all Books in the Library, and must sign the same, acknowledging the Possession of such Books; which Catalogue he must deliver to the proper Ordinary, within the Time aforesaid.

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## Libraries Parochial.

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And upon any Vacancy, the Library must be lock'd up by the Churchwardens, or by a Person appointed by the proper Ordinary, or by the Archdeacon; unless the Place where such Library is kept shall be used for the Vestry, or otherwise for Dispatch of Business; and after that is done, the Place is to be lock'd up.

And likewise a Book shall be kept in the Library for the entering of all Benefactions, which the Incumbent is to see fairly entred; and the Ordinary is to make proper Rules and Orders, but not contrary to the Order of the Donor, which shall be entred in the said Book.

None of the Books shall be alienable, without the Consent of the Ordinary; and then only when there is a Duplicate of such Book. And if any Book is taken away or lost, a Justice of Peace may grant his Warrant to search for the same; and if it is found, the Justice shall immediately order it to be restored to the said Library.

A Book to be kept for Benefactions.

The Books not alienable without Consent of, &c.

### A Warrant to search, &c.

Essex, ss. **W** Hereas Complaint hath been made before me, by A. B. Rector of C. in the said County, that a Book called, Hooker's Ecclesiastical Polity, was lately taken out of the Library erected in the Parish of C. aforesaid, and appropriated to the Use of the Minister there: These are therefore to require you to search diligently in all Places where you and the said A. B. shall suspect the same to be; and in Case the same shall be found, that then you immediately cause the same to be restored to the said Library, &c.

### Licenses. See Ale-houses and Badgers.

**L**icenses for Badgers, Drovers, &c. are to be granted in open Quarter-Sessions, and be dated the Day of the Sessions, and must be sealed by three Justices of the Peace (one to be of the *Quorum*) under the Penalty of 5 *l*. And the Sessions must take Bond that the Person licensed shall not forestal. The Recognisance costs 4 *d*. and the License 1 *s*. which shall not endure above a Year, unless the same be yearly renewed. 3 & 4 *Edw*. 6. c. 21. 5 & 6 *Edw*. 6. c. 14. 5 *Eliz*. c. 12. 39 *Eliz*. c. 4. 1 *Jac*. 1. c. 25.

Licenses granted in open Quarter-Sessions.

Badgers must  
sell their Goods  
themselves.

Two Justices  
may license  
poor diseased  
Persons to go  
to Bath, but  
not to beg.

A Woman can have no License; and those Men who have License must sell their Goods themselves, and not by their Servants. And without a License Persons must not buy Corn but in the Markets.

Two Justices may License poor diseased Persons to travel to the *Bath* for Remedies, so as they are provided of Relief in their Travel, and do not beg. 39 *Eliz. c. 4. Dalt. 209. 1 Jac. 1. c. 25.* For I do not find that any one or more Justices of Peace may or can in any other Case license a Man to beg or ask Relief at all, but only may make a Testimonial or License in the two following Cases; viz. 1. To such as suffer Shipwrack; and 2. To Soldiers or Mariners coming from the Seas, to pass from Place to Place. And in these two Cases only, the Law tolerateth them to ask and receive necessary Relief, as afore said.

Likewise poor Prisoners delivered out of Gaols may in no wise beg, by 39 *Eliz. c. 4. Dalt. 209.*

Sessions may inquire of, and determine the Licenses for Badgers, &c. which may be granted in open Sessions. A License as before may be granted to Drovers of Cattle, to buy and sell again by the same Statute.

A Presentment, Bill or Information against Drovers or Badgers, on 5 *Eliz. c. 12.* on Examination of two Witnesses, shall be as if he had been indicted by twelve. *Crompt. 125. Lamb. c. 19. p. 601. 5 Eliz. c. 12.*

## Linen Cloth.

**I**F any Person shall use, or cause to be used any Deceit by stretching, or otherwise impairing Linen Cloth, so as to damage the Cloth, he shall forfeit the Cloth, and suffer one Month's Imprisonment at least, and shall pay such Fine as three Justices (*Quor. 1.*) shall assess, who shall have Power to hear and determine Offences at Quarter-Sessions. 1 *Eliz. c. 12.*

10 Ann. c. 21.  
& 12 Ann.  
c. 20.

Linen Cloth made in *Scotland*, to be of well-sorted Yarn equally wrought, and fine, from one End of the Piece to the other, and made by the Standard Yardwand; and all *St. Johnston's*, and other plain, brown and green Cloth made for whitening, shall be one Yard and Nail, or three Quarters and a Nail broad, that when whited, it may be a full Yard, or full three Quarters broad; and

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the whole Piece in Length 84 Yards, half Piece 42 Yards, &c. that so when whited, it may be 80, or 40 Yards, &c. And all other Sorts of plain Cloth, a full Yard, or full three Quarters in Breadth, and in Length 40 Yards the Piece, 20 Yards half Piece, &c. See Measures appointed for Linen Checks, striped Linen Neckcloths, Ticken, &c. Any Person making Linen Cloth in Scotland contrary to this Act, being convicted thereof by Oath of Overseer or Searcher, or two Witnesses, shall forfeit for every Inch less than Measure in Breadth, and every Yard less in Length, 5s. and for every Piece not made of well-sorted Yarn, &c. 5s. Any Person buying, or exposing to Sale Linen Cloth not made, &c. according to this Statute, shall forfeit for each Piece 5s. Conviction in six Months before one Justice or chief Magistrate of this City, &c. On Refusal, Distress and Sale; for Want, to be sent to the House of Correction so long as Justice shall think fit, not exceeding twelve Months; Penalties to the Poor and Informer. Any Person counterfeiting a Stamp, forfeits 50*l.* or a Year's Imprisonment. Selling Linen Cloth, &c. before stamped, or exporting it before stamped, such Person shall forfeit 5s. a Piece for every Piece. No Stamp-Master for himself, or any other, shall buy, or dispose of Linen Cloth, or stamp any, not made as the Act directs, on Forfeiture of 5s. a Piece, and to lose his Office for the future. Making use of Lime, or Pigeons Dung for whitening or bleaching Linen Cloth in Scotland, forfeit 20s. a Piece, on Conviction of two Witnesses, or Confession, to be levied and disposed, as aforesaid. 10 Ann. c. 21. and 12 Ann. c. 20.

By Stat. 13 Geo. 1. It is enacted, That no Person in What Measures to be used in Scotland shall vend any Linseed or Hempseed, by any other Measure than the Linlithgow Measure streaked, and the Fractions thereof, under the Penalty of forfeiting the Measure used by him, and 40s. Sterling.

No Person shall sell or import into Scotland Hefps, Linen Yarn, but such as is made up into Cuts of twelve or Hanks, each Hesp or Hank consists exactly of twelve Cuts, and each Cut containing

any Person lawfully authorized by Justice, &c. into any House, the Doors being may enter and search, &c. Any Person found, other than two Yards and Half, or 90 Inches in Circumference, the same shall be carried before a Justice or Magistrate, who is to break, burn or destroy them.

Penalty of  
Weaver not  
doing his Du-  
ty, &c.

If any Weaver shall not weave any Linen Yarn delivered to him into such Cloth, and within such Time, and in such Manner as was contracted for, or shall waste, imbezil or damnify any Yarn delivered him, he shall make good the Party's Damage, and also pay to the Person aggrieved, not exceeding 40s. nor less than 20s.

None to use  
Lime, &c. in  
bleaching, &c.

No Person shall use Lime, Pigeons Dung, or Soap Dregs, for bleaching Linen or Yarn, on Forfeiture of the Linen or Yarn, and 5*l.* Sterling to the Informer; and if the Linen or Yarn so whitened shall not be found, the Justice or Magistrate shall set a further Fine on the Offender, not exceeding 5*l.* to be levied, together with the former 5*l.* as hereafter is directed; and the Offender shall also be incapable to bleach or whiten Cloth or Yarn for two Years after such Conviction.

Justices may  
summon  
Bleacher, &c.

One or more Justices, or any Magistrate within a Borough, may summon the Servant of any Bleacher or Dealer in Hempseed or Lintseed, or any other Person, and examine him on his Oath, what he knows of his Master's or other Persons using Lime, Pigeons Dung, or Soap Dregs in Bleaching of Linen or Yarn, or other Breach of this Act, for three Months immediately preceding such Examination. And if such Person shall refuse to appear on Summons, the Justice may issue his Warrant to bring him before him; and if he refuse to be examined, or answer on Oath to the Purpose, the Justice or Magistrate shall commit him to the adjacent Gaol or Tolbooth, there to remain 'till he submit to be examined, the Person defying such Oath to be tendered to such Servant or Person first making Oath, if required, that he believes the Person, whom he desires to be examined on Oath, can discover some Breach of this Act; but no Servant or Person shall be liable to any Punishment for any Thing relating to the Crime, which on Examination he shall discover.

King may  
point Twenty  
one Trustees  
for Linen Ma-  
nufactures in  
Scotland.

His Majesty, by Letters Patent under the Great Seal, appointed by the Treaty of Union to be kept in Scotland, may appoint any Number of Persons resident and overseen, not exceeding Twenty-one, to be Trustees for Power to the Linen and Hempen Manufactures, with for the Improve at such Places, and to make such Rules preventing Abuses thereof the said Manufactures, and consistent with the Intent of the said Acts, shall think expedient the Realm.

All Dealers in  
Linen must  
carry it to the  
Lapper, &c.

All Dealers in Linen, before they export Laws Cloth (if the same be white) shall carry it in the whole fold of a Yard or Half Yard in Length, to the Lapper Stamp

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## 585

All Offences against this Act (except the Counterfeiting of the Marks of private Dealers) shall be determin'd by one Justice of the Peace or any Magistrate within a Borough, Town or Village, or by the Determination of Witnesses, &c. Where Offences are to be determin'd, &c.

on Oath adjudge, the same, and issue his or their Warrant to the Constables of the Place, requiring them to distrain, according to the Laws of *Scotland*, so much of the Offender's Goods as will satisfy the Penalties, &c. And if no Distress can be found, the Justices may commit the Offender to the House of Correction, or next Gaol, for so long Time as they shall think proper, not exceeding one Year in the Whole.

If any find himself aggrieved by the Determination of the Justices, he may immediately after Sentence enter his Appeal, in the Presence of the Justices, from the said Sentence to the next Quarter-Sessions; of which Appeal the Justices are to make a Minute, and stop Execution till the End of the next Quarter-Sessions; and the Justices at their Quarter-Sessions are to proceed upon, and finally determine the said Appeal; and if they give Judgment against the Appellant, to decree him to pay the full Costs of the Appeal, and to pay a Fine not exceeding double the Penalty, for which the original Sentence was given.

All Makers of  
Sail Cloth  
must stamp it,  
&c.

By Stat. 4. G. 2. If any Maker of Sail-Cloth in *Great Britain*, shall expose to Sale any Piece or Pieces of Sail-Cloth, without being stamp'd at the End of every Piece of Sail-Cloth with a Stamp, containing the Name and Place of Abode of such Maker in plain distinct Letters and Words at Length, being lawfully convicted on the Oath of one or more Witnesses, before one or more Justices of the Peace for the County, City or Town, where the Offence shall be committed, shall forfeit 5 *l.* for every Piece of Sail-Cloth sold or exposed to Sale not being stamp'd as aforesaid; and if any Person shall wilfully or maliciously cut off, destroy, or obliterate any Stamp so affix'd, or shall affix, or make use of any Stamp, on which shall be marked the Name and Place of Abode of any other Person, and not his or their real Name or Names, and Place or Places of Abode; such Person being convicted of any of the Offences aforesaid, shall for every such Offence forfeit 10 *l.* both which last mentioned Forfeitures shall be levied by Distress and Sale of the Offender's Goods and Chattels, by Warrant under the Hands and Seals of two or more Justices for the County, Riding, &c. where the Offence shall be committed, and shall go to the Informer.

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cap. 14.

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## Lodgers.

If any Lodger shall take away, with an Intent to steal, imbezil or purloin, any Chattel, Bedding or Furniture, which by Contract or Agreement, he or they are to use with such Lodging; it shall be adjudged Larceny and Felony; and the Offender shall suffer as in case of Felony. 3 & 4 W. & M. cap. 9. continued & 5 W. & M. cap. 24. made perpetual by 6 & 7 W. cap. 14. *Vide Felony.*

Lodgers not to Imbezil Goods out of their Lodgings.

Loom=Lace, See Bone=Lace,  
Low=bells, Lurcher, See Game,

## Lord's Day, or Sunday.

It is very meet and reasonable, that some Part of our Time in this World should be set apart to be employed in taking Care for the next. God in the 4th Commandment to the *Jews*, appointed every seventh Day to be the Sabbath, or the Day of Rest both for Man and Beast, which was kept by the *Jews* with so much Superstition, that it often exposed them to very great and grievous Calamities. After the Coming of our Saviour, who was Lord of the Sabbath, the Sabbath was changed, contrary to the express Letter, of the fourth Commandment, from the Seventh to the first Day of the Week, in Commemoration of our Saviour's Resurrection, as the *Jewish* Sabbath had been in Memory of the Creation. How this Alteration was made does no where (that I know of) appear in Scripture, tho' it is pretty plain that it was religiously observed both by the Apostles themselves, and the Primitive Christians, almost from the very Time of our Lord's Resurrection; and continues still to be kept holy by all who profess Faith in Christ, except a few Judaizing Christians who place more Religion in keeping holy the Sabbath-Day, than in doing Works of Justice and Mercy.

The seventh Day of the Week changed into the first.

However, as it is objected to us by Foreigners, that there is no Place where there is so little outward Profession of Religion as in *England*; so must it at the same Time be confessed, that the Lord's Day is no where so strictly



strictly and nicely kept as in *Great Britain*; and to that End, several Acts of Parliament have been made for the strict Observation thereof, which may be divided under three Heads.

1. For repairing to Divine Service.
2. Prohibiting the Exercise of any Trade or Calling.
3. Prohibiting the Profaning the Lord's Day by Sports and Pastimes.

1<sup>st</sup>, Every one on this Day (not having a reasonable Excuse) must diligently resort to some publick Place where the Service of God is performed, and such as repair not to Church, &c. on *Sundays* and Holy-days, being convicted by one Witness, forfeit each of them 12*d.* for every Default, to be levied by Distress; and for want of Distress, to be committed till the same be paid. 1 *Eliz. cap. 2.* 23 *Eliz. cap. 6.* 3 *Jac. 1. cap. 4.* 29 *Eliz. cap. 6.* 35 *Eliz. cap. 1.* 13 & 14 *Car. 2. cap. 4.*

Every one who absents from Church for a Month, forfeits 20*l.* and if he be absenting for twelve Months or more, 20*l.* for every Month, and Forfeiture of two Parts in three of his or her Estate.

N. B. These Acts extend not now to Protestant Dissenters qualified by Stat. 1 *W. & M. cap. 18.*

Not coming to the Sacrament, must be presented.

If any one come not to the Sacrament of the Lord's Supper once a Year, his or her Name and Surname must be presented; 40*s.* Reward to such as present them.

*Ja. 1. cap. 4.*

Must not do any Thing in Contempt of the Sacrament.

None shall speak or do any Thing, in Contempt of the most Holy Sacrament, on Penalty, upon his Conviction by the Oaths of two lawful Witnesses, to be bound over by three Justices (*Quorum unus,*) &c. and prosecuted for the same. 1 *Ed. 6. cap. 1.*

None to disturb a lawful Preacher.

Whosoever shall disturb any lawful Preacher in his open Sermon, or be procuring or abetting thereunto, or shall rescue any such Offender, shall be committed by any Justice of the County to safe Custody; and within five Days the said committing Justice, with one other Justice, (if the Offender upon Examination shall be found guilty) shall commit him to Gaol without Bail or Mainprize for three Months, and further to the next Quarter Sessions. 1 *M. cap. 3.*

Prohibiting any Trade or Calling. Shoe maker not to sell.

2<sup>dly</sup>, Shoe-maker putting Boots or Shoes to Sale forfeits three Shillings and four Pence, and the Goods. *Ja. 1. cap. 22.*

Carriers

Carriers, Drovers, Waggoners travelling on that Day, Carriers, &c.  
 forfeit Twenty Shillings for every Offence. 3 Car. 1. not to travel.

These Forfeitures are recoverable by Distress on a War-  
 rant, or by Bill, or Information, in Sessions, to the Use  
 of the Poor where taken. But though the Driving is  
 through several Parishes; yet there shall be but one For-  
 feiture for one Day.

Butchers killing or selling, or causing to be killed or Butchers not to  
 sell on the  
 Lord's Day.  
 sold, or privy, or consenting to kill or sell Meat on that  
 Day, forfeit 6s. 8d. for every Offence. 3 Car. 1.

Proof must be by View, Confession of the Party, or  
 two Witnesses upon Oath. Prosecution within six Months  
 after the Offence.

By 29 Car. 2. c. 7. The Conviction is made more 29 Car. 2.  
 easily, and by this Statute publick and private Duties of  
 Piety are enjoined, all wordly Business is prohibited; None above 14  
 and if any Person of the Age of Fourteen Years, shall on to do any  
 the Lord's Day do any Work or Labour, (except Works Work on the  
 of Necessity and Charity) he shall forfeit 5s. for every Lord's Day.  
 Offence. 29 Car. 2. c. 7.

Sale on a Sunday is not good. 12 Ed. 4. c. 1. Dalt. None to sell  
 any Goods.  
 18, 139. No Person shall cry, shew forth, or put to  
 sale any Wares, Fruit, Goods, &c. (except Milk, &c.  
 before Nine in the Morning, or after Four in the After-  
 noon) on Pain to forfeit the same. Ibid.

No Drover, Horse-Courser, Waggoner, Butcher, Hig-  
 ger, or any their Servants, shall travel, or come to their  
 Inns on the Lord's Day, or forfeit 20s. for every Of-  
 fence. Ibid.

No Person shall use, or travel upon the Lord's Day, Or travel with-  
 out License.  
 with any Boat, Wherry, Lighter or Barge, except al-  
 lowed by one Justice of the Peace so to do, or forfeit  
 5s. for every Offence. Ibid.

Conviction must be before any Justice of the County,  
 &c. or chief Officer, by View, Confession, or Proof by  
 one Witness; who shall give Warrant to the Constables,  
 &c. to seize and sell the Goods shewed, &c. and to levy  
 the Forfeiture by Distress, or for Want thereof, put the  
 Party into the Stocks for two Hours. Ibid.

The Justices, &c. may reward the Informer out of Justices may  
 reward Infor-  
 the Forfeitures, not exceeding one Third Part. Ibid. mer.

This Act extends not to dressing Meats in Inns, Cooks May dress  
 Meat in Inns,  
 Shops, or Victualling-Houses. Ibid. Sect. 3. &c.

Every Person to be impeach'd hereupon, must be pre- Prosecution in  
 sented within ten Days after the Offence. Ibid. ten Days.

If any Person travelling on a *Sunday* be robbed, the Hundred shall not be chargeable to him; but in Default of fresh Suit, they shall be chargeable to the King, for as much as might have been recovered against them by him. *Ibid.*

No Process to be served on the Lord's Day.

If any Person on the *Sunday* serve or execute, or cause, &c. any Writ, Process, Warrant, Order, Judgment, &c. (except in Case of Treason, Felony, or Breach of the Peace) such Service shall be void, and the Party liable to answer Damages, as if no Writ had ever been made. *Ibid.*

Some Hackney-Coachmen may ply.

Commissioners for regulating and licensing Hackney-Coaches, may appoint 175 of those allowed in *London*, to stand, ply, and drive on the Lord's Day within the Bills of Mortality; so as the whole Number of 700 may be employed successively: Others not so appointed, forfeit Five Pounds, if they ply, stand, or drive on the Lord's Day. 5 & 6 W. & M. c. 22. 9 Ann. c. 2. 1 Geo. c. 17.

But this Clause is altered by a Clause in Stat. 9 Ann. c. 23. whereby all the Hackney-Coachmen are allowed to ply on the Lord's Day notwithstanding the above-written Clause, or any Thing contained in Stat. 29 Car. 2.

Some Watermen may ply.

And by another Statute of 11 & 12 W. 3. c. 21. forty Watermen are allowed to ply on every Lord's Day between *Vaux-Hall* and *Lime-House* for carrying Passengers cross the River of *Thames*, at a Penny each. Also the Watermen of *St. Margaret's Westminster*, are allowed by the same Statute to ply cross the *Thames* from *Westminster Bridge* to *Stangate*, and from the *Horse-Ferry* to *Lambeth Bridge*, on the Lord's Day; the Monies earned thereby being applied to the poor decay'd Watermen and the Widows of the said Parish, for which the Watermen working shall account before any two Justices of the said Parish.

Prohibiting Sports or Pastimes.

None to meet to use Sports or Pastimes on the Lord's Day.

3dly. If any meet together out of their own Parish for any Sports or Pastimes, they forfeit 3s. 4d. each. 1 Car. 1. c. 1.

Prosecution must be within a Month, &c.

Proof by one Witness before one Justice, or Confession of the Party.

Forfeiture is for the Poor of the Parish where the Offence is committed, and to be levied by Distress on Warrant, &c. and in Default thereof, the Offender is to be put in the Stocks for three Hours.

All the Laws for frequenting Divine Service on the Lord's Day are still in Force, notwithstanding the Statute



11 W. & M. c. 18. unless Persons go to some Con-  
gregations tolerated by that Act.

Constable for arresting (for Good Behaviour) on that  
Day in the Church-yard, coming from Church, fined.  
Cro. 602. *Prinson's Case.* Godbolt Pl. 397.

A Warrant to levy 5s. on those who use  
a Trade, or any worldly Labour, on  
the Lord's Day.

Ex. ff. **W** Hereas it hath been duly proved before me 29 Car. 2: c. 7.  
on Oath, that A. B. and C. D. both One Justice,  
of the Parish of, &c. Barbers, [or as the Case is] and be- one Witness  
ing of the Age of Fourteen Years and upwards, did exercise on Oath.  
the Work of their ordinary Callings or Trades at, &c. on the Prosecution  
seventeenth Day of this Instant December, being the Lord's within ten  
Day; by Reason whereof each of them hath forfeited the Days after the  
Sum of 5s. for the Use of the Poor of the said Parish: Offence.  
These are therefore, &c.

But Crying and Selling Milk, and Works of Necessity  
and Charity are excepted, and Mackerel are also allowed  
to be sold by a later Statute. 11 & 12 W. 3. c. 24.

A Warrant to levy the Penalty on Per-  
sons travelling on the Lord's Day.

Ex. ff. **W** Hereas it hath been duly proved before me, 3 Car. 1. c. 1.  
that A. B. of D. &c. being a common One Justice  
Carrier [or as the Case is] did the Sixth Day of July last (ut prius) but  
being the Lord's Day, travel with his Horses into, and by the Oath of  
through your said Parish of D. contrary to the Statute in two Witnesses.  
that Case made and provided; by Reason whereof he hath Prosecution  
forfeited 20s. to the Use of the Poor of the said Parish: must be with-  
These are therefore, &c. to command you forthwith to levy in six Months,  
the said Sum of 20s. on the Goods and Chattles of the but by 29 Car.  
said A. B. by Distress and Sale thereof, rendring to him 2. c. 7. ten  
the Overplus, and that you see it employed to the Use of the Days.  
Poor of your said Parish, as by Law it ought. Given,

## A License to travel on Horseback on the Lord's Day.

29 Car. 2. c. 7. Midd. ff. **F**Orasmuch as J. S. Gent. the Bearer hereof, came before me L. M. Knt. one of his Majesty's Justices of the Peace for this County, and hath this Day given me such reasonable Satisfaction, as is required by the Statute in that Behalf made, of his urgent Occasion to travel on Horseback upon the next Lord's Day, from his House in, &c. in the Parish of, &c. in the County aforesaid, to the Town of C. in the County of D. These are therefore to certify, that I have, according to the Directions of the Statute aforesaid, given free License and Liberty to the said J. S. to undertake and perform his said Journey on the next Lord's Day, as aforesaid: Hereby requiring you the said Mayors, Bailiffs, Constables, and other his Majesty's Officers of the Peace above-mentioned, to permit and suffer the said J. S. quietly and peaceably to travel on that Day through your several and respective Jurisdictions, Liberties and Precincts, at his Discretion, without any Molestation or Disturbance whatsoever. Given, &c.

## A License to travel by Water on the Lord's Day.

29 Car. 2. c. 7. Midd. ff. **F**Orasmuch as J. S. Esq; &c. (as next above to) of his urgent Occasions to travel by Water on the next Lord's Day to Richmond in the County of Surrey, and to use and employ one or more Watermen with a Boat or Wherry in his said Voyage: These are therefore to certify that I have (according, &c.) given free License &c. to the said J. S. to undertake, &c. on, &c. hereby requiring you the said Mayors, &c. to permit, &c. the said J. S. quietly, &c. to perform his said Journey on the next Lord's Day, as aforesaid, and to use and employ any Boat or Wherry with Watermen, at his Discretion, without any Molestation or Disturbance whatsoever. Given, &c.

## Lotteries, &c.

EVERY Person who shall erect, set up, continue, 8 Geo. 1. c. 2.  
 or keep any Office or Place under the Denomination If any Person  
 of Sales of Houses, Lands, Advowsons, Presentations to erect any Lot-  
 Livings, Plate, Jewels, Ships, Goods, or other Things tery, &c. for-  
 for the Improvements of small Sums of Money; or shall feits 500 l. and  
 sell, or expose to Sale any Houses, &c. by Way of Lot- to be commit-  
 tery, or by Lots, Tickets, Numbers, or Figures; or ted by two  
 who shall make, print, advertise, or publish, or cause Justices with-  
 to be made, advertised or published Proposals or Schemes, out Bail, for a  
 for advancing small Sums of Money by several Persons, whole Year:  
 amounting in the whole to large Sums, to be divided  
 among them by the Chances of the Prizes in some pub-  
 lick Lottery or Lotteries; or shall deliver out, or cause,  
 or procure to be delivered out, Tickets to Persons advan-  
 cing such Sums to intitle them to a Share of the Money  
 so advanced, according to such Proposals or Schemes; or  
 shall make, print, or publish, or cause to be made, &c.  
 any Proposal or Scheme of the like Nature under any Deno-  
 mination, or Title whatsoever; and shall be thereof  
 convicted on the Oath of one or more credible Witnesses;  
 by two or more Justices of the Peace of the County, &c.  
 where such Offence shall be committed, or the Offender  
 found; the Person so convicted shall for every Offence  
 over and above any former Penalties inflicted by any  
 Act of Parliament made against private and unlawful Lot-  
 teries) forfeit 500 l. one third to the Crown, one other  
 third to the Informer, and the remaining third to the  
 poor of the Parish where the Offence shall be committed,  
 to be levied by Distress and Sale of the Offender's Goods,  
 by Warrant of the Justices before whom convicted; and  
 shall also for every Offence be committed by the said Ju-  
 stices to the County Gaol, without Bail or Mainprize,  
 for one whole Year, and from thence 'till the said 500 l.  
 be fully paid. But Persons aggrieved by the Determina-  
 tion of such Justices, may appeal to the next Quarter-  
 sessions for the County, &c. whose Judgment shall be  
 final.

Adventurers in such Sales and Lotteries, &c. shall  
 forfeit double the Sum contributed to the same. 8 Geo. 1.  
 c. 2.



## Lunaticks.

Lunaticks may be taken up and chained, but not whipped.

**T**WO Justices may, by their Warrant directed to the Constables, Church-wardens, and Overseers of the Poor of the Parish, or Place where Lunaticks or Mad Persons shall be found, cause such Lunaticks and Persons furiously Mad to be lock'd up, and if necessary, chained, &c. (but not whipped) during their Lunacy, &c. and charge their Estate if any) for their Maintenance; (or if none) provided for as the Poor of the Parish. 12 *Ann. cap. 23.*

But this shall not extend to abridge the King's Prerogative, or the Authority of the Lord Chancellor, touching the Premises.

Lustrings. See *Blamodes*.

## Maihem.

Maihem what.

**M**AIHEM is a corporal Hurt, whereby the Use of any Member is lost, or any Deformity occasion'd; as if a Limb or Joint is so wounded that the Use thereof is lost or impaired, or an Eye put out, or a Tooth broke, &c. But *Staundf. p. 39.* tells us it must be a Fore-tooth broken; for if the Grinders or Cheek-Teeth are broken, or even beat out, he says it is not a Maihem, *quia latent & non inducunt corporis deformitatem.*

Castration is a Maihem.

But my Lord Coke tells us, that Castration (*quam latet*) is a Maihem, and cites a Case to prove it, viz. *H. Hull indictatus fuit de Maihemio eo quod abscidit viribus Johannis Monachi*, whom he caught in Adultery with his Wife. But they tell you that cutting off an Ear is not a Maihem, *quia latet.*

Sessions cannot increase the Fine.

For this Offence an Indictment will lye at the Sessions and they might set a Fine for it; but the Justices, upon View of the Person maimed, cannot increase the Fine as the Court of *B. R.* may do.

The Judgment upon a Conviction on an Indictment is a Fine; and upon an Action of Trespass, Damages, &c.

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and therefore a Recovery in Trespass is a good Bar in an Appeal of Maihem.

In an Appeal of Maihem, Defendant pleaded in Bar, that the Appellant had recovered two Hundred Pounds against him, in an Action of Assault, &c. and averred it was for the same Offence; and this was held a good Plea. *Moor* 668. *Leon.* 518. 4 *Rep.* 45. 5 *H.* 4. c. 5.

It is now made Felony without Benefit of Clergy in any, together with all their Counsellors, Aiders and Abettors, designedly and maliciously to cut off and disable the Tongue, put out the Eye, slit or cut the Nose, or cut off or disable any Limb or Member, with an Intent to maim or disfigure. 22 & 23 *Car.* 2. c. 1.

By a Statute made 9 *Annæ*, c. 16. Any Person unlawfully attempting to kill, or who shall unlawfully strike, assault, or wound a Privy Counsellor, in the Execution of his Office, shall suffer as a Felon without Benefit of Clergy.

Felony to wound a Privy Counsellor.

## An Indictment for Maihem.

*Exemplum.* **T**HE Jurors, &c. do present, that on the Ninth Day of July, (in such a Year) A. B. of L. in the County aforesaid, Gent. with Force and Arms at L. aforesaid, made an Assault in and upon one M. N. then and there being in the Peace of our said Sovereign Lord the King, and with a drawn Sword [or as the Case is] of the Value of 5s. which the said A. B. then and there held in his Right Hand, maliciously and unlawfully smote the said M. N. and then and there cut the Right Cheek of the said M. N. and so the said Jurors do declare upon their Oath, that the said A. B. then and there wickedly and (a) feloniously maihemed the said M. N. to the great Detriment of the said M. N. and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

(a) This Word is requisite, it being Felony at Common Law. 3 *Instit.* 18. 2 *Cron.* 101.

## Maintenance.

**M**aintenance is where any Man giveth or delivereth to another, who is Plaintiff or Defendant in any Action, any thing to support his Cause, *pendente lite*, or by Word or Writing, upholds or maintains Quarrels and

*Moor* 562, 815, 816. What is Maintenance.

and Suits (not being a Party therein) to the Disturbance of common Right.

Maintainers of Quarrels, and Embracers of Jurors are to be imprison'd, and bound to the Good Behaviour. 33 H. 8. c. 10. 37 H. 8. c. 7. Lamb. 440.

To maintain one of the Parties in any Suit in a Court of Justice, is Maintenance; but it must be *pendente placito*; for if Money be given before the Suit begun, it is not Maintenance. 3 H. 6. fol. 53.

Champerty.  
what.

When the Maintainer is to have Part of the Land or Debt when recovered, it is Champerty; but where he is to have no Part of it, it is Maintenance; when he laboureth for Witnesses either to appear, or by instructing them, or threatening, &c. then he is an Embracer, and may be punished at the Suit of the King or Party.

To inform a Jury of his own Head, and not as a Witness, is Maintenance. 28 H. 6. fol. 6.

Cases of Maintenance.

If one Jurymen gives Money to another of the Jury to bring in his Verdict, it is Maintenance. 17 Edw. 4. fol. 5.

If a Person of Power or Authority declare publicly in the hearing of many People, that he will spend Money for such a Person in a Suit, &c. it is Maintenance. 9 H. 7. fol. 18.

If one, who is no Party to the Suit, write a Letter to a Jurymen to appear, it is Maintenance; but if it is done by one of the Parties to the Suit, it is Embracery. Yet my Lord *Hobart* tells us, that where the Defendant was indicted for desiring a Juror to appear, and to do him reasonable Favour, or Words to the like Effect, this is not punishable, because the Court must know the very Words. *Moor* 816. 2 *Leon.* 134. *Hob.* 295.

No Maintenance to assist a Prosecutor on an Indictment.

To assist a Person prosecuting an Indictment, is not Maintenance, because it is for the Advantage of the King; but it is otherwise if the Prosecution had been by an Information upon a penal Law, because there a private Person is concerned also. *Godb.* 169.

Nor for Men to join who have a joint Interest.

So where Men have a joint Interest, as for Right of Common, &c. there they may join and enter into Bonds to defend that Right against the Lord or any other Person, and it is not Maintenance, because it is in Effect but the Interest or Suit of one; and as they have this Prejudice by it, that one cannot be a Witness for the other, therefore it is not unreasonable that they should all join for their common Advantage.

Shewing the Jury Precedents, Maintenance.

Soliciting the Jury, and shewing them Precedents where great Damages were given in a like Case, it is Maintenance. 3 *Cro.* 536.

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By Stat. 32 H. 8. c. 9. If any shall buy any pretended Title to Land, unless the Seller hath taken the Profits thereof one whole Year next before such Bargain, then both Buyer and Seller are each to forfeit the Value of the Land. None to buy pretended Titles. Dyer 53.

And by the same Statute none shall unlawfully maintain any Suit, or retain any Person for Maintenance, embrace Jurors, or suborn Witnesses, on Pain to forfeit for every Offence 10*l.* to be divided between the King and the Prosecutor. Maintainers forfeit 10*l.* and are punishable either by Indictment or Information.

Maintenance is punishable either by an Information upon the afore said Statute, or by an Indictment at Common Law.

One was disseised, and being out of Possession, and without making any Entry, she made a Lease of the Lands to another to try the Title against the Disseisor; and this was held Maintenance, although the Lessee had no Interest by his Lease. So likewise where one contracted with another to sell him a Title which he supposed he had to sell, and made a Lease to a Friend to try the Title, though no Action was brought, or any thing done on it. *Moor* 266, 751. 1 *And.* 201. 1 *Leon.* 162.

Indictment in Maintenance must set forth a Suit, and withal must say *illicite manutenuit*. *Sav.* 41, 42. 1 *Vent.* 302.

### Indictment for Maintenance.

*Essex, ss.* **T**HE Jurors, &c. do present, that A. B. of C. in the County afore said, Gent. (such a Day and Year) at C. afore said, in the County afore said, unjustly and unlawfully maintained and upheld a certain Action, which was depending in the Court of our Sovereign Lord the King, before the King himself, between L. M. Plaintiff and N. O. Defendant, of a Plea of Debt on the Part of the said L. M. against the said N. O. against the Form of the Statute in such Case made and provided, and to the manifest Delay and Disturbance of Justice, and in Contempt of our said Sovereign Lord the King, and to the great Damage of the said N. O. and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c. It must set forth a Suit. *Savil* 42.

Prosecution on the Statute must be within a Year after the Offence committed.

## Mayors. Vide ante p.

**I**N what Cases Mayors of Corporations may, by Virtue of several Acts of Parliament, act as Justices of Peace, you may read in the former Part of this Treatise, p. What we shall add in this Place is,

Mayor must conform to the Church of England.

By Stat. 13 Car. 2. c. 1. No Person shall bear any Office of Government in any Corporation, &c. that hath not received the Sacrament according to the Church of England, within one Year before the Election, and who shall not take the Oath of Allegiance and Supremacy, &c.

By this Statute Mayors, &c. were likewise to subscribe a Declaration that there lay no Obligation upon them from the Oath commonly called the Solemn League and Covenant; but this is taken away by a late Statute 5 Geo. 1.

By the Statute 10 Annæ, Mayors and Officers of Corporations are prohibited from going to Conventicles where the Royal Family shall not be prayed for in express Words (though the Liturgy of the Church of England be used) under the Penalty of 40*l*.

Ensigns of Magistracy must not be carried to Conventicles.

But this is altered by 5 Geo. 1. c. 6. but the Mace, Gown, or other Ensigns of Magistracy, may not be carried to a Conventicle, on Pain of Disability to enjoy any Office, &c.

By Statute 9 Ann. c. 20. If any Person intrudes into or executes the Office of Mayor, Bailiff, &c. a *Quo Warranto* may be brought against the Usurper; and if the Defendant in the *Quo Warranto* shall be found Guilty of an Usurpation or Intrusion, the Court shall give Judgment of Ouster, fine the Offender, and order the Plaintiff Costs.

An Annual Officer not to be chose two Years successively.

And no Person, who hath been or shall be in an Annual Office for one Year, shall be chosen into the same Office the next Year. And obstructing the Choice of a Successor incurs a Penalty of 100*l*.

As in Pais must have the Seal of the Corporation and the Mayor's Hand.

A Corporation cannot do an Act in *Pais*, without the Common Seal and Hand of the Mayor; but they may do an Act upon Record without it. The Mayor of *Thetford's Case*, Hill. 1 Ann. Salk. Rep. 192.

For if an Action be brought against a Corporation for a false Return of a *Mandamus*, because it was returned without the Common Seal, or the Hand of the Mayor, they are estopped to say it is not their Return; for it is the *Responsio Majoris & Communitatis* upon Record.

If a Mayor will return a Writ contrary to the Sense and Consent of the Majority of the Corporation, they cannot avoid it, as he is the Head and Principal; but they may take their Course against him. The Mayor of *Norwich's Case*, *Salk.* 432.

Where a Mayor returns a Writ of his own Head.

On a *Mandamus* to the Mayor, Aldermen, and Commonalty of *Rippon*, to restore a Person to the Place of Alderman, it was proved that he declared to the Corporation he would no longer serve in that Office; which Resignation the Corporation accepted and chose another, and held good. But it was held he had Power to wave his Resignation at any Time before they had made an Election. *Sir Jonathan Jennings's Case*, *Salk.* 433.

Case of an Alderman of Rippon.

Serjeant *Whitacre* got a *Mandamus* to be restored to his Recordership of *Ipswich*, from which he had been removed for not attending at the Sessions of the Peace, though he had Notice. But the Court held that the Recorder was bound to attend and assist at the Sessions, to direct the Corporation in the Proceedings of Justice; and that Non-attendance is a good Cause of Forfeiture of his Office, which so nearly related to the Administration of Justice. *Salk.* 435.

Recorder removed for not attending Sessions.

Where a Corporation has a Patent to make a Town-Clerk *durante beneplacito* of the Mayor and Aldermen, they may turn him out at their Pleasure. *Sed Quære* of a Recorder. 2 *Keb.* 461. And an Alderman cannot be turn'd out.

Town Clerk may be removable at Pleasure.

An Obligation being sealed with the Common Seal of a Corporation, which the Mayor signs, the Corporation afterwards dissolved, the Mayor is suzble upon it. 2 *Leon.* 137.

Mayor suzble where the Corporation is dissolved.

But if a Corporation seals a Bond, and two of their Members sign it, and afterwards the Corporation is dissolved, the particular Persons are not obliged by it. 1 *Leon.* 437.

But not the particular Members.

If the common Officer of a Corporation does any Thing for their common Use, the Town shall be answerable. 1 *Leon.* Case 215.

Corporation answerable for what its Officers do.

Every City and Town Corporate may, by a Power inherent to their Constitution, make By-Laws for the Government of the Body Politick. 5 *Mod.* 429. And a Body Politick is a Creature of the King, created by Letters Patent. *Hill.* 22 *Car.* 2. *B. R.* The Consent of the greater Part shall be binding; but they may not make any Ordinances to the Diminution of the King's Prerogative, or against the Publick Good, under the Penalty of 40*l.* 19 *H.* 7. c. 7.

Every City, &c. has Power of making By-Laws.



ACTIONS must not be brought in Corporation for Things arising out of their Jurisdiction.

What amounts to a Forfeiture of Charter.

ACTIONS arising out of Corporations ought not to be tried in Corporation Courts; for their Jurisdiction extends no further than to the Trial of such Actions, the Cause whereof arises within their Jurisdictions. *Lut. 1571.*

If a Corporation neglects to choose such Officers as they ought to elect by their Charter, or if they make a false Election, this may amount to a Forfeiture. And the Charter implies Conditions in Law for them to perform; and by the Non-performance the Charter is forfeited. *Hill. 21 Car. 1. B. R.*

### Malt.

THERE was an Act of Parliament relating to Malt made 17 *Rich. 2. c. 4.* and another 3 *Jac. 1. c. 11.* but neither of them any way relating to the Office of a Justice of Peace; I shall forbear saying any more of either of them in this Place.

2 & 3 Ed. 6.  
c. 10.

The first which gives any Power to Justices of Peace is 2 & 3 *Edw. 6. c. 10.* by which it is enacted, that none shall employ less Time in the making and drying of Malt (except in the Months of *June, July* and *August*) than three Weeks; nor in those Months less than seventeen Days; nor put to Sale any Malt mingled of good and bad, on Pain to forfeit for every Quarter so put to Sale 2*s.* to be divided between the King and the Prosecutor.

2 & 3 Ed. 6.  
c. 10.

None shall put any Malt to Sale before (by treading, rubbing and fanning it) he shall have conveniently taken out of every Quarter Half a Peck of Dust, or more, on Pain to forfeit 20*s.* for every Quarter otherwise sold, to be divided between the King and the Prosecutor.

Justices of Peace in Sessions, and Stewards in Leets, have Power to hear and determine these Offences, as well by Presentment of twelve Men, as by Information of two Witnesses.

Bailiffs and Constables of Towns and Places where faulty Malt is made and mingled as aforesaid, have Power to make Search for it; and it being found, (with the Advice of a Justice of Peace) to make Sale thereof at their Discretions.

None shall be punished by this Act, who only maketh Malt for his own Provision, nor unless the Action be prosecuted within one Year.

The

The Statute 39 Eliz. c. 16. Entitled, An Act to restrain the excessive making of Malt, is repealed *per Stat.* 39 Eliz. c. 16. repeal'd.

9 & 10 W. 3. c. 22.

By Stat. 8 & 9 W. 3. cap. 21. a Duty of 6 d. *per* Bushel on Malt, is given to the King, his Heirs and Successors, the Collecting it to be under the Management of the Commissioners of Excise, from the Twentieth of April, 1697, to the Twentieth of April, 1699.

The Duties on Malt have been prolonged by the several Acts of Parliament in the Margin; and continu'd from Time to Time down to this present Year 1732.

10 Ann. c. 3. 12 Ann. c. 3. 1 Geo. 1. Sect. 1. 3 Geo. 1. c. 4. 4 Geo. 1. c. 5. 5 Geo. 1. c. 2. 6 Geo. 1. c. 2. 7 Geo. 1. c. 20. 8 Geo. 1. c. 2. 9 Geo. 1. c. 3. 10 Geo. 1. c. 2. 11 Geo. 1. p. 83. 12 Geo. 1. p. 151. 1 Geo. 2. 2 Geo. 2. 3 Geo. 2. 4 Geo. 2.

8 & 9 W. 3.

13 W. 3.

1 Ann. c. 3.

2 Ann. c. 9.

3 Ann. c. 3.

4 Ann. c. 5.

5 Ann. c. 23.

6 Ann. c. 4.

7 Ann. c. 3.

8 Ann. c.

9 Ann. c. 3.

By 6 Geo. 1. c. 21. All Informations, Complaints and other Proceedings, as well before Commissioners of Excise, as Justices of Peace, shall and may be entred and inrolled in the *English* Tongue.

By 13 & 14 W. 3. c. 5. If when the Duty is paid, the Malt should be lost either by Fire or Water, the Collector of the Duty shall repay it to him.

But then he must prove his Loss at the Quarter-Sessions by Oath of two Witnesses; and the Justices in Sessions must certify it under their Hands and Seals; and upon producing the Certificate, the Money must be paid.

By Stat. 4 Ann. c. 5. the like Proof must be made at the next Quarter-Sessions, if the Malt be taken by the Enemy; and upon the like Certificate, the Collector of the Duty is obliged to pay so much to the Proprietor as shall have been by him paid for the Quantity of Malt so proved to be taken.

If any Malt shall be damaged by the Casting away or Sinking of the Vessel, the Justices in Sessions, upon Proof thereof, and of Payment, or Security given for the Duty, may settle the Quantity of the Damage, and what Allowance to make, and certify the same under their Hands and Seals; and the Proprietor producing that Certificate to the Collector of the Duty, he shall repay or allow the Sum therein certified; or in Default thereof, the Proprietor may deduct it out of any subsequent Duty becoming due.

The Person sustaining any Damage, &c. must, three Days before the next Sessions, give Notice in Writing to the Collector, &c. where such Damage shall happen, of his Intention to apply himself to the Sessions.

Proceedings may be in English.

13 & 14 W. 3.

1 Ann. continu'd by 7 Ann.

c. 3. 9 Ann.

c. 3. 12 Ann.

c. 3. 1 Geo. 1.

c. 4. continu'd

'till 24 June,

1718.

4 Geo. 1. c. 2.

continued to

24 June, 1720.

6 Geo. 1. c. 3.

continued to

1721.

1 Ann. c. 3.

7 Ann. c. 3.

Malt lost or

damaged must

be allowed for.

Sufferer must

give three

Days Notice to

Quarter Ses-

sions.

6 Geo. 1. c. 21.  
Malster not to  
wet his Malt  
on the Floor.

Sessions may  
upon Appeal  
finally deter-  
mine Informa-  
tions, &c. on  
Excise.

9 Geo. 1. c. 3.  
Malt lost or  
damaged after  
Duty paid,  
must be al-  
lowed for.

Maltsters to  
make Entries  
once a Month.

No Malster, or Maker of Malt for Sale or Exporta-  
tion, shall wet his Barley on the Floor, or any other  
Place but in his Cistern, duly entred for that Purpose,  
at the Office of Excise, of the Division or Place, &c.  
on the Forfeiture of 2s. 6d. per Bushel. Nor shall  
permit any Corn to sprout at the End from which the  
Blade proceeds; if he does, then an Officer may take  
up an Handful in any particular Part of the Floor or  
Wetting; and if he find that more than one Part in  
fifteen in his Hand sprouts at the End, the entire Wet-  
ting shall be deemed of the same Nature; and the Mal-  
ster shall be charged with the full Duty of Six-pence per  
Bushel; and likewise shall forfeit 5s. for every Bushel.

Upon Appeals to the Sessions from any Judgment gi-  
ven by particular Justices, upon Informations for Offences  
relating to the Duties on Malt, Hides, and Skins, &c.  
the Sessions may re-examine the Truth and Merits of the  
Fact, upon the Oaths of the Witnesses, and finally deter-  
mine the same, and rectify and amend any Defects of  
Form in the Orders of particular Justices.

By the 9th of King Geo. 1. c. 3. If after the 25th of  
March, 1723. and after the Duties by 12 Ann. c. 2.  
imposed on Malt, and thereby continued, are paid, any  
Quantity of Malt shall happen to be destroyed or da-  
maged by Fire, or shall perish or be damaged by the  
casting away of, or by any inevitable Accident happening  
to any Barge or Vessel, in which the Malt shall be trans-  
porting from one Part of this Kingdom to another, or  
put on Board for that Purpose; and this being proved  
by the Oath of one or more credible Witnesses, and of  
the Duty being paid before the Justices in the Quarter-  
Sessions; then the Sessions may grant a Certificate thereof,  
and of the Amount of the Duty; and upon producing  
such Certificate to the Collector of the Duties on Malt,  
he shall repay the Proprietor so much Money as the  
Sum certified to be paid for the Duty of the Malt so lost  
shall amount unto; and if not totally lost, but damnified  
only, the Sessions shall settle the *Quantum*, on Proof of  
the Damage and Payment of the Duty; and certify un-  
der their Hands and Seals how much they allow for Da-  
mages, to be repaid by the Collector. *Vide le Statute.*

By Stat. 8 & 9 W. 3. c. 18. Every Maker of Malt  
shall once a Month make an Entry at the next Excise-  
Office of all the Malt he hath made, under the Penalty  
of 10l. and shall within three Months after (but now  
the Time is enlarged to four Months, by Stat. 1 Geo. 1.  
c. 2.) pay the Duty for the same respectively; and re-

fusing

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delivering  
shall forfeit  
the Value  
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Refusing or neglecting to make such Payment, or selling or delivering out any Malt before the said Duty be cleared, shall forfeit double the Duty in the first Case, and double the Value in the last.

Officers of Excise are to enter in the Day time into the Houses, Malt-houses, or other Places, to gauge the Vessels used for steeping Barley, &c. for making of Malt, and take an Account of the Quantity steeped therein, leaving a Copy of the Account with the Malster for a Charge. Malster refusing Entrance to the Officer forfeits 5 *l*.

Officers of Excise may enter in the Day-time.

No Maker of Malt shall alter his Vessel for steeping of Barley or Grain for Malt, without first giving Notice thereof to the next Officer of Excise, nor keep any private Vessel for that Purpose, under the Penalty of 50 *l*.

Malster not to alter his Vessel without giving Notice.

Collectors of Excise may agree with Persons making Malt for their own Families only, at 5 *s*. per Ann. for every Head in the Family, and take Security for paying the same Quarterly: But if such Person, after Composition, shall sell or deliver out any Malt to others, or sell any Beer, Ale, or other Liquors made of Malt, he shall forfeit 50 *l*. and lose the Benefit of such Composition.

Collectors may agree for 5 *s*. per Head.

The Bushel in this Act is meant to be the *Winchester* Bushel; and the Barley or Grain in steeping, or steeped, shall be returned as so many Bushels of Malt, according to such Bushels; but out of every twenty Bushels of Malt, charged by the Gauger, there shall be an Allowance of four Bushels, in Consideration of the Difference between Corn wet and swollen, and the same converted into dry Malt.

What Measure is meant.

By Stat. 2 Ann. c. 2. If any Maker of Malt shall conceal or convey away his Malt from the Sight of the Gauger appointed, he shall forfeit 10 *s*. for every Bushel thereof.

Penalty of concealing Malt.

Justices have Power to mitigate the Penalties above, so as not to be reduced to less than double the Duty, and the Costs and Charges in Prosecution, as in the Case of Brewers.

If any Malt shall be brought from *Scotland*, either by Sea or Land, it shall be entred either at the Port of Landing, or at *Berwick* or *Carlisle*, and pay Duty 6 *d*. per Bushel, on Pain of forfeiting the Malt, or the Value thereof, by Stat. 9 Ann. c. 3. All Prosecutions on this Act to be made within five Years after the Offence committed.

For Forfeitures of Malsters for Concealments to defraud the King of his Duty, Conviction to be by Information on

How Convictions of Malsters must be.

Maltsters must  
not mix fresh  
Corn in Malt-  
ing.

on Oath of Gaugers, &c. before two Justices of Peace  
13 & 14 W. 3. c. 5.

By 7 Ann. c. 3. No Malster shall mix Corn or Grain making into Malt of one Wetting, with Corn making into Malt of a former Wetting, before the same is put on the Kiln for drying, on the Forfeiture of 5 s. for every Bushel so mix'd; one Moiety to the King, the other to the Informer. 7 Ann. c. 3.

### A Warrant to levy the Forfeiture for wetting Barley on the Floor, &c.

6 Geo. 1. c. 21. Essex, ff. **W** Hereas A. B. of, &c. Gauger of Excise, hath this Day made Information on Oath before us C. D. and E. F. Esqs; Justices of the Peace for the County aforesaid, that G. H. of, &c. on, &c. wetted, or caused to be wetted, fourscore Bushels of Barley making into Malt on the Floor, in the House of the said G. H. and not in his Cistern duly entred, contrary to the Statute in that Case made and provided: These are therefore to command you to levy on the Goods and Chattels of the said G. H. the Sum of 10l. which he hath forfeited by the Offence aforesaid. Given, &c.

### A Warrant to levy the Forfeiture for not making an Entry.

13 & 14 W. 3. Essex, ff. **W** Hereas A. B. of, &c. Officer of Excise, has this Day made Oath before me, that C. D. of your Parish, Malster, hath for these six Weeks last past and more, made Malt in a House belonging to the said C. D. situate, &c. without making any Entry, at the Excise-Office, of the said Malt, as the Acts of Parliament direct, whereby he hath forfeited the Sum of 10l. These are therefore in his Majesty's Name, to require you to demand the said 10l. of the said C. D. so forfeited as aforesaid; and upon his Refusal to pay the same, that you do levy the same on the Goods and Chattels of the said C. D. by Distress and Sale thereof, rendring to him the Overplus (if any). Given, &c.

A War-

A Warrant to levy the Forfeiture for concealing of Malt and Cisterns for steeping of Malt.

Effex, ff. **W** Hereas A. B. of, &c. Gauger, hath this 13 & 14 W. 3. Day made Information on Oath before us, c. 5. that on, &c. of this Instant, &c. in the House of C. D. Malster, situate, &c. he found out and discovered a private Cistern or Vessel for steeping of Barley, at which Time there were thirty Bushels of Barley steeping in the said Cistern unentered, contrary to the Statute in that Case made and provided: These are therefore in his Majesty's Name to command you to levy on the Goods and Chattels of the said C. D. the Sum of 14l. which we do hereby adjudge he hath forfeited, and order to be paid, and no more, for the Offence aforesaid, by Virtue of the Power to us given by the Acts of Parliament to mitigate Penalties for the Offences of this Kind. Given, &c.

Manlaughter. See Homicide.

## Manufactures.

See Artificers and Apprentices.

**P** Persons employed in making up the Woollen, Linen, Fustian, Cotton, or Iron Manufactures, imbezilling or purloining any Wests, Thrums, or Ends of Yarn, or any other Materials of Wool, Hemp, Flax, Cotton, or Iron, with which intrusted, or that shall reel false or short Yarn, being thereof convicted by Oath of one Witness, or Confession, before one Justice, &c. shall forfeit double the Value of Damages done, for the Use of the Poor. On Neglect or Refusal to pay, to be sent to the House of Correction 'till Satisfaction made; if not able, to be kept there not above Fourteen Days, publicly whipped, and kept to hard Labour. Buyers and Receivers of, &c. liable to the same Punishment. 1 Ann. c. 18. This Act at first was temporary, but by 9 Ann. c. 30. was made perpetual.

1 Ann. c. 18.  
Manufactures  
not to imbezil  
Goods with  
which they are  
intrusted,

Markets



## Markets and Fairs.

Are held by  
Grant or Pre-  
scription.

**T**HESE being by Grant or Prescription, if they are held otherwise, they are unlawful. *2 Saund.* 174.

In every Shop in *London*, every Day (except *Sunday*) is a Market Overt; and the Sale in Shops there for a just and valuable Consideration is good.

But then it must be of such Goods which are proper to the Trade of him in whose Shop it is sold; as Plate in a Goldsmith's, &c. *5 Co.* 85.

3 Rep. 78.

And it must be sold openly in the Shop, and not in a clandestine and secret Manner; and the Buyer must not know that the Goods are stolen. In the Country where Things are sold in distinct Places in a Market or Fair, the Goods must be sold in the usual Place appointed for the Sale thereof, otherwise the Property is not altered. *Moor* 300. *3 C.* 78.

Goods sold by  
one to whom  
they were  
pledged, the  
Property is not  
alter'd.

If I deliver Goods to another to keep for me; or if I pledge them, and he sells them in a Market, the Property is still in me, and is not altered by such Sale. *Hob.* 79.

Sale upon a *Sunday*, though in a Market or Fair, does not alter the Property. *Co.* *5 Rep.*

It hath been a Question, whether a Clerk of a Market can distrain *ex Officio*, for using unlawful Weights or Measures not according to the Statute

Fairs are not  
to be held for  
more Days  
than they are  
granted.

Fairs or Franchises, whether they be held by Charter or Prescription, must be holden for no more Days than may be warranted by Grant or Usage; and the Sheriff ought to make Proclamation that those who have Fairs, keep them no longer than they ought to do. *2 Ed.* 3. *c.* 5. And the Lord of the Fair at the Beginning thereof shall make Proclamation how long the same is to continue, on Pain to be grievously amerced to the King; and if he hold over, the Fair shall be seized into the King's Hand 'till he make Fine for the Offence: And if a Merchant sell Wares after the Time, he shall forfeit to the King double the Value for what it is sold; and the Prosecutor shall have the fourth Part. *5 Ed.* 3. *cap.* 5.

No Fair or  
Market shall  
be kept in  
Church-yards.

No Fair or Market shall be kept in Church-yards. *13 Ed.* 1. *c.* 6. Stat. *Winchester.*

None shall buy Cattle to sell them again in the same Fair. *3 & 4 Ed.* 6. *c.* 19.

Touching

Touching Sale of Horses in Fairs, &c. See Title Horses.

For Office of the Clerk of the Market, see Title Weights and Measures.

He that pleads a Sale in Market, must plead that it was done *in pleno Mercato*.

By Stat. 10 & 11 W. 3. c. 14. *Billingsgate* is made a free Market for Fish every Day, except *Sundays*.

No Fisherman or other Person selling Fish there, shall pay any other Toll or Duty for every Vessel with Salt-Fish for Groundage, 3 *d.* per Day, and 20 *d.* per Voyage, to be disposed of as Lord Mayor and Court of Aldermen direct. For every Lobster-Boat, every Vessel with fresh Sea-Fish, and every Dogger-Boat or Smack with Sea-Fish, for Groundage 8 *d.* per Day, and 13 *d.* per Voyage; and for every Oyster-Vessel or Cock, for Groundage 2 *d.* per Day; for Metage one Half-penny per Bushel, and 13 *d.* per Voyage, and no more, in full for all Duties, &c. to be disposed of as afore said.

All Persons buying Fish at *Billingsgate* may sell the same again any where in *London* by Retail, only none but Fishmongers shall sell in fix'd Shops or Houses.

This Act not to alter any Law in Being concerning Fish caught by Foreigners.

Any Persons taking Toll or Sample, or any other Imposition on any Sea-Fish of *English* Catching (being contrary to 5 *Eliz.* c. 21.) shall forfeit 10 *l.* one Moiety to the King, the other to the Prosecutor.

None shall employ or be employed by any other Person in buying at *Billingsgate*, any Quantity of Fish, to be divided by Lots or in Shares among any Fishmongers or others, to be afterwards sold by Retail or otherwise. Nor shall any Fishmonger ingross or buy in the said Market any Quantity of Fish but what shall be for his own Sale or Use, and not for any other Fishmonger to sell again, under the Penalty of 20 *l.* each Offence; one Moiety to the Poor of the Parish, the other to the Prosecutor.

None to buy Lots of Fish for Fishmongers.

No Fisherman or other Person shall bring on Shore or sell any Lobsters which are not eight Inches long, under Penalty of 12 *d.* for every such Lobster; one Moiety to the Poor, the other to the Prosecutor, to be recovered on Conviction before the chief Magistrate of any City or Corporation, or before the next Justice of Peace where the Offence is committed.

No Fish (except Stock-Fish and live Eels) taken by any Foreigners, Aliens, (except Protestant Strangers inhabiting within the Kingdom) shall be imported in any Foreign Ships.

Foreign

## Markets and Fairs.

Foreign Ship or Vessel, not being wholly *English* Property, and sold in *England*, under the Pain of forfeiting such Ship, &c. with its Tackle, and all the Fish so imported and sold; one Moiety thereof to the Poor of the Parish where seised, the other to the Seisor; but not to prohibit the Importation of Anchovies, Sturgeon, Bortago, or Cavear, nor selling Mackarel before or after Divine Service on *Sundays*.

A Sale in a Market Overt shall not bind him who hath Right to Goods, if the Sale be by Fraud; or if the Person that buys the Goods hath Notice that the Property is another's. *Hill. 33 H. 6. f. 5. pl. 15.*

Where Plate was stolen, and afterwards sold in a Scrivener's Shop, the Property was not altered; nor if it had been sold to a Goldsmith in a Back-Shop; but the Sale must be in an open Shop, where every one that passes by may see. So resolved *Hill. 38 Eliz. at the Sessions in the Old-Baily. 5 Co. 83. Poph. 84. 1 And. 344. pl. 319. Hetly's Rep. 62, 63. Panton versus Hassel. Godb. Rep. 131. Kelynge's Rep. p. 35.*

Sale to a Pawn-broker, though in his Shop, alters not Property. *Kelynge 50.* it is not a Market Overt. *1 Ja. 1. c. 21.* So his Sale of pawned Goods alters not the Property. *Hob. 79.*

Refusing one the Goods, on the Sum tendred, and to make Delivery, indictable. *Black. 229. Sed Quære de hoc.*

**Master.** See Apprentices.

**Measure.** See Weights.

**Militia and Musters.** See Soldiers.

**Miller.** See Weights.

**Minister.** See Divine Service.

**Misprision of Treason.** See Treason.

**Marriages.**

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## Marriages.

See **Bigamy and Felony, and Woman.**

**A**LL Marriages made since 1642, before any Justice of Peace, confirmed and made good, and Issues about Bastardy, or otherwise touching the same, to be tried by Jurors, by Stat. 12 Car. 2. c. 33.

Marriages by Justices of Peace made good.

If any Parson, Vicar or Curate shall marry any Person without publishing the Banes of Matrimony, or without License, he shall forfeit 100*l.* and the Person married 10*l.* also the Clerk of the Parish 5*l.* to be recovered in the Sessions, &c. 6 & 7 W. 3. c. 20.

## Misdemeanors.

**T**HIS Word in its general Sense, including all Sorts of Crimes and Offences, it would be endless to enumerate all that might be spoke to under this Head; I shall therefore content my self with mentioning a few.

A Woman being abused by her Husband, hired a Parson to come and whip him; who accordingly came in Woman's Cloaths with a Rod, and fell upon the Husband: In struggling they were both hurt, and the Parson ran away from the Husband, who died a little after the Scuffle: All this coming in Proof before the Court, the Wife and Parson were each of them fined 500*l.* *Poph. 129.*

One sent a Challenge by another to fight; they were both indicted for this Misdemeanor, and fined 100*l.* a-piece, and committed for a Month without Bail; and were to make a publick Recantation, as the Court should direct, and to be of the Good Behaviour for seven Years. *Id. 186.*

One sending a Challenge, fin'd 100*l.*

Sir C. S. was indicted at Common Law for a Misdemeanor for shewing himself stark naked, and other Enormities, in a Balcony in *Covent-Garden*. He confessed the indictment, was fined 2000 Marks, and to be committed

Sir C. S. fin'd 2000 Marks for a Misdemeanor.

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for

for a Week without Bail ; and to be of the Good Behaviour for three Years. *Sid.* 162.

Another fin'd for seducing an Apprentice.

Another fin'd 1000 Marks for offering 100 l. to kill the Master of the Rolls.

Another for misreading a Release to an illiterate Man, who sealed it.

Another was indicted for seducing an Apprentice to a Bawdy-House, and causing him to spend his Master's Money. *Sid.* 168.

Another for intending to kill the Master of the Rolls, and offering a Person 100 l. to do it, was fined 1000 Marks, to be imprisoned three Months without Bail, and to be of the Good Behaviour during Life. *Sid.* 231. *Levinz* 146. *Baron's Case.*

Another for reading a Release to an illiterate Man in other Words than it was written, which he sealed. *Sid.* 312.

### A Condition of a Recognizance for Misdemeanor.

**U**PON this Condition, that if you A. B. shall personally appear before our Sovereign Lord the King's Justices of the Peace, at the next general Quarter-Sessions of the Peace, to be holden for the County of Essex ; and do then and there make answer unto all such Things which (on his Majesty's behalf) shall be objected against you ; and do not depart thence without Leave of the Court ; then this your Recognizance to be void, or else to stand and be in full Force and Virtue, &c.

### Misprision.

What is Misprision of Treason.

**I**S where one knows that another has committed Treason or Felony, but was not consenting to it, and yet conceals the Offender. For if he knoweth of the Treason before it is committed, or if he receive and comfort a Traitor, knowing him to be so, then he is a principal Traitor ; for there are no Accessaries in Treason.

By the Common Law, concealing Treason was Treason, but now by Statute of 1 & 2 M. c. 10. it is declared to be only Misprision.

Forging Foreign Money Misprision of Treason.

By 14 *Eliz.* c. 3. Forging foreign Money is made Misprision of Treason.

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*Inst.* 13.  
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The Judgment in Misprision of Treason is Forfeiture of Goods and Chattels for ever, Forfeiture of Profits of Lands, during Life, and Imprisonment during Life. 3

The Judgment in Misprision of Treason.

*Inst.* 134.

Like Judgment is it, with the Loss of the Right Hand, for one to draw a Sword, or strike a Judge or Juryman in the Presence of a Judge sitting in Court, or to strike one in *Westminster-Hall*, sitting the Courts, or to draw a Weapon upon any Judge or Justice in Presence of a Judge of Assize, or to rescue a Prisoner from the Bar of *B. R.* And in the like Cases.

By the Common Law, concealing a Felony, procuring the Concealment, or compounding it, was Misprision of Felony.

But if a Man knows that a Felony is committed, and takes his Goods again, 'tis no Offence, unless he takes them, or some other Amends, not to prosecute, and then it is called Theftbote; and this is an Offence more than a Misprision of Felony, because it is more than a Concealment of the Felon, but the Punishment is the same in both Cases, *viz.* Fine and Imprisonment, if in a common Person; if in an Officer a Fine, and though paid, Commitment for a Year. Punished by Fine and Imprisonment.

If a Grand Jurymen discover the Persons indicted, or the Evidence, he is punishable by Fine and Imprisonment. Grand Jurymen may be fined and imprison'd.

If a Person assault a Judge, or Judge of Assize, the like Punishment.

Or if he assault a Juror, for giving a Verdict against the Offender.

And though Justices of Peace are not impowered by their Commission, or by any Statutes, to hear and determine these Offences, yet since they are against the Peace, they may cause the Offenders to be taken; and two Justices may take Informations upon Oath against such Persons, and put it into Writing, and bind the Witnesses in a Recognizance to prosecute and give Evidence at the Assizes, &c. What Justices may and ought to do.

*N. B.* That every Treason or Felony do include Misprision, so that where any Person hath committed Treason or Felony, the King may cause the Offender to be indicted and arraigned but of Misprision only. *Dalt.* Every Treason includes Misprision.

335. Compounding of Felonies is also Misprision of Felony at the least, if it be not Felony. *Ibid.*

*N. B.* That all Treasons, Misprision of Treason, and Concealment of Treason, done or committed out of the Realm, shall be inquired of and tried within the Realm; Treasons out of the Realm where to be tried.



## Mittimus.

*viz.* in the King's Bench, or else before Special Commissioners. 35 H. 8. c. 2. and 5 Ed. 6. c. 11. *Dyer* 132, 287, 298, 360. Co. 7. 23. and 11. 63.

## Mittimus.

What a Mittimus is.

**A** Mittimus is the Warrant by which the Prisoner is sent to Gaol, &c.

How to be framed.

It must be in Writing, and under Hand and Seal.

The Names of the Party committed, the Time of making it, the Cause of the Commitment must be expressed in it; as for Treason, Felony, or Suspicion thereof; that it may appear whether the Prisoner beailable or not; and that those who have the Custody of him, may take the more Care of him; for if the Cause be expressed to be Treason or Felony, it is so in the Officer who suffers him willingly to escape, whether he be guilty or not: Otherwise if no Cause be expressed. If it be a Commitment to the House of Correction only, the Mittimus ought to express the Cause. Co. 2. *Instit.* 52. If the Commitment be without Bail or Mainprize, and it express the Cause, which is a Case wherein he isailable by Law, it seems reasonable that other Justices of Peace may bail him; but if no Cause be expressed, other Justices shall not do well to bail him without the Privy of the first Justices; because the Cause of the Commitment may (probably) not beailable. *Dalt.* 439.

If the Mittimus be general, the other Justices that bail, must take Notice at their Peril. *Ibid.*

For the Peace it ought to express what Sum is demanded of the Sureties, that it may not be exorbitant. 2 *Vent.* 22.

Must be to the common Gaol. Some have been of Opinion 'tis best for the Justice to give a Warrant to the Constable to carry the Offender, and also a Mittimus to the Gaoler to receive him, especially if it be for an Offence against a Statute.

And directed to the Gaoler. The Mittimus should be directed to the Gaoler or Keeper of the Prison: It ought also to express the Person who makes it; as *A. B.* one of the Justices of Peace of the County, &c.

It must have apt Conclusion. It must have an apt Conclusion, as thus, [The Prisoner safely to keep until he be delivered by due Course of Law, &c.] But then that general Conclusion is not good, when

the Prisoner is committed for not doing something ordered or enjoined by some Statute ; as to find Sureties, or the like ; for then the Mittimus must conclude accordingly ; and great Care is to be taken of this, or otherwise the Warrant is void. *Co. 2. Inst. 591.*

If the Mittimus be for Felony, and the Felon hath confessed the Felony upon his Examination, it ought to be so expressed in the Mittimus.

### A Mittimus of a Prisoner on Suspicion of Felony.

Essex, *ss.* **J.** *S. one of His Majesty's Justices, &c. to the Keeper of His Majesty's Gaol of Chelmsford for the said County, &c. or to his Deputy there, Greeting. These are in His Majesty's Name to charge and command you that you receive into your said Gaol the Body of A. B. late of, &c. taken by F. C. and J. S. Constables of the Town of W. and by them brought before me, for Suspicion of Felony, &c. and that you safely keep the said A. B. in your said Gaol until the next general Gaol-Delivery for the said County [if he be not bailable ; or if he be bailable, then thus] until he shall thence be delivered by due Course of Law : And hereof fail not, &c.*

### A Mittimus of a Felon after his Examination taken.

Essex, *ss.* **J.** *S. Bart. one of the Justices, &c. to the Keeper of His Majesty's Gaol at Chelmsford, for the said County, &c. Greeting. I send you herewith the Body of R. G. late of F. Apothecary, brought before me this Day, and charged with the felonious Taking of twenty Sheep ; (which also he hath\* confessed upon his Examination before me) and therefore these are (on the Behalf of our said Sovereign Lord) to command you, that immediately on Sight hereof, you receive the said R. G. and him safely keep in your said Gaol, until that he shall be thence delivered by due Course of Law. Hereof fail you not, as you will answer for your Contempt, at your Peril. Given, &c.*

\* But this Clause maketh the Prisoner not to be bailable.

## Money.

Foreign Coin  
made to pass  
current by  
Proclamation.

**A**LL foreign Coins, which by the King's Proclamation are allowed to pass, are to be paid and received for good Money.

By 19 *H. 7.* If any refuse lawful Coin in Payment, he is to be compelled by the Officer of the Place to take it, and imprison'd, or otherwise punished, as such Officer shall think fit. And if a Sheriff or other Officer refuse it, he may be compelled to take it by a Justice of Peace, and otherwise punished, at the Justice's Discretion, upon 19 *H. 7. c. 5.* but *Quære* how it may be; he may bind them to the Good Behaviour for a wilful Contempt herein: It is safe to do it at Sessions. Any one Justice may compel a Man to take crack'd Money or commit him to Prison, upon 19 *H. 7. cap. 5.*

Justices have Power to hear and determine all Defaults about Money. *Ibid. Co. 2. Inst. 742.*

One Justice  
may hear and  
determine  
whether a  
Piece of Mo-  
ney be good or  
not.

By 9 & 10 *W. 3. c. 21.* Any Person to whom Silver Money shall be tendred, that shall be diminished otherwise than by wearing, or that shall be suspected to be counterfeit, may cut or break the same in Pieces; and if it appear to be so, Person tendring shall bear the Loss; if not, Person breaking shall take it for what it was coined. If any Dispute arise about it, one Justice, Mayor, &c. may tender an Oath to any Person for determining any Question relating to the Piece.

## Mortuaries.

In what Cases  
Mortuaries are  
to be taken,  
and when not.

**I**T is Extortion to take any Thing at all for a Mortuary, where by the Custom they have not usually been paid, nor where the Goods of the dead Person come not to ten Marks, besides Debts; or for a married Woman, or Infant, or one that keeps no House, or wayfaring Man, or any that is not resident where he died; or to take above 3*s.* 4*d.* for a Mortuary when the Goods amount to ten Marks, and under thirty Pounds; or above 6*s.* 8*d.* where the Goods are thirty Pounds, and under forty Pounds; or above ten Shillings, where the Goods are above 40*l.* the Debts paid; and the Taker forfeits so much as he takes, and likewise 40*l.* to the Par-  
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grieved. Cr. 59. a. N. 28. 21 H. 8. c. 6. And if the Person die in a Place where he or she dwelleth not, their Mortuary shall be paid in the Place where they had their most Abode.

There is a Proviso in the said Statute, that Mortuaries shall be paid in *Wales*, where they have been accustomed to be paid; and that the Archdeacon of *Chester* may take them that have been usually paid.

Prohibition lies upon Suit in Court Christian, for Mortuaries not due, besides an Indictment for Extortion.

**Murder.** Vide Homicide.

**Muster.** Vide Soldier.

## Mute.

**W**HEN an Offender is arraigned, and either will not answer at all, or will not answer directly, or plead; then he is said to stand mute. In the first Case it must be enquired, whether he is mute by the Act of God, or by Malice and Stubbornness, &c. If he was born dumb, or is mute by the Act of God, then the Court and the Jury must go on and enquire of the Felony, and whether the Person at the Bar be the same Person; but if he is mute by Malice, then he shall have Judgment, and so he shall, if he doth not answer directly.

But in Treason to stand mute, is taken for a Confession, and consequently amounts to a Conviction, and the Criminal shall suffer as a Traitor, and after Attainder, standing mute must be executed. Dy. 241.

In Appeal must be hanged.

If one indicted of Felony (for which he is not to have Clergy) stands mute, he shall have Judgment of (*Peine fort & dure*); which is that the Offender be remanded to Prison, and laid in a low and dark Room, naked on the Ground, and on his Back, and his Arms and Legs extended by Cords, and Iron or Stone laid on his Body something more than he can bear; next Day he shall have three Morfels of Barley Bread, without Drink; the third Day he shall drink thrice of the Water next the Prison, but not running Water, and shall have no Bread; and thus he shall be kept till dead; and besides this he forfeits all his Goods. Moor 550.

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Where an Offender stands mute.

Judgment where Mute in Treason.

In Appeal.

Judgment where mute in Felony. *Peine fort & dure*.

But

## Night-Walkers, &amp;c.

But where he is arraigned of a Felony, in which Clergy is allowed, there he shall have his Clergy. *Moor Ibid.*

Needle-Work. See Bone-Lace.

Nets. See Hunting, Partridges and Pheasants, Game, Fish, &c.

News. See Pamphlets.

## Night-Walkers.

**N**ight-Walkers, if justly suspected, or of ill Fame, such as sleep in the Day-time, and haunt Bawdy-houses by Night, or keep suspicious Company, may, upon Oath made thereof, be compelled to find Sureties for the Good Behaviour, by a Justice of Peace; and that by the first Assignavimus in the Commission. 13 Ed. 1. Stat. *Winch. c. 4* & 5 Ed. 3. c. 14.

Night-Walkers to be bound to their Good Behaviour, and may be indicted at Sessions.

Any one may arrest Night-Walkers, and they may be indicted at Sessions. *Poph. 208. Latch 137, 173. Bend-love 199. Poph. 208.*

Night-Walkers suspected to be Pilferers, or otherwise like to disturb the Peace, or of evil Fame, may be bound to their Good Behaviour. *Dalt. c. 35. c. 87.*

Noblemen. See Peers.

## Non-conformists.

10 Ann. c. 2.

**P**ersons in any publick Office or Employment, Place of Trust, Profit, or that receive any Salary or Wages, by Reason of any Grant, Patent, &c. or bear Office of Trust in any Corporation, non-conforming to the Church of England, shall forfeit 40*l.* to be recover'd in *Westminster-Hall*, and incapable of any Office, &c. for the future, unless conform for a Year, and receive the Sacrament three Times within the same 10 Ann. c. 2. but Part of this Act, and also the Schism-Act made 12 Ann. c. 7. are repeal'd by a Statute 5 Geo. 1. c. 4.

*Notwich*

## Norwich and Norwich Stuffs.

**B**Y 13 & 14 Car. 2. c. 5. In *Norwich* and the County of *Norfolk*, there must be twelve Wardens and thirty Assistants chose, who within fourteen Days after Notice thereof, must take an Oath before the Mayor, faithfully to discharge their Office. If they refuse or die within the Year, the Master-Weavers may choose others.

*Raym.* 192.

Half of the Wardens are to be chosen on *Whitson-Monday*, by the greater Part of the Master-Weavers in the City. Half of the Assistants on the same Day by the greater Part of the Weavers of the County.

Seven of the Wardens and Assistants may meet when they please, or as often as desired by the Assistants. Fourteen Days before they intend to meet, the Wardens of the City must give Notice to those in the County, when they intend to meet, by setting such Notice upon the Door of their *Sealing-Hall*.

Two of them may search in the publick Places for Sale, and seise defective Yarns, and within twenty Days afterwards bring them to a Trial by Jury, who may impose Fines on the Yarn, not exceeding Half the Value, to the Use of the Poor of the Trade. By-Laws being made and confirmed by the Mayor and two Justices of the City, and three of the County (*Quorum unus*) must be published four Times in a Year, at four Assemblies for Trade, and may impose Fines not exceeding 10s. for every Offence.

Any one disturbing them, convicted by Oath of one Witness, or by his own Confession, before the Mayor or a Justice of Peace of the City or County, forfeits 40s.

At their four Assemblies for Trade, they are to account before the Mayor and one Justice of the City, and two of the County, for what Fines and Forfeitures they have received, and what they have expended about the Trade, and what remains by the said Mayor and Justices to be divided as they shall direct, between the Poor of the Trade of the City and County.

The Jury must consist of twelve Artificers, Half of Whom the City, and Half of the County, and must be impartially chosen by Precept from the Mayor or Deputy; and if any being summoned refuse to appear, forfeits 5s. to the Poor of the Trade.

All Stuffs in which there is Wool, must be under the Regulation of Wardens and Assistants, and must be brought

13 & 14 Car.

c. c. 5.

Twelve Wardens and thirty Assistants to be chose.

Seven Wardens may meet when they please.

Two of them may search in publick Places.

Any hindering them forfeits 40s.

To account before the Mayor and one Justice.

Whom the Jury must consist of.



## Norwich and Norwich Stuffs.

brought to *Weavers-Hall* in *Norwich*, before they are exposed to Sale; and if found good, then seal'd; if defective, they must be tried by a Jury, &c. who may set Fines not exceeding Half the Value of the Stuffs, for the Use of the Poor of the Trade, and detain them 'till paid, and sell them, if not paid within forty Days after Trial.

Persons in whose Possession unsealed Stuffs are found, forfeit 40s.

They in whose Possession unsealed Stuffs shall be found, forfeit 40s. *per* Piece, and the Maker or Seller 4s. for selling them unsealed, to the Use of the Poor of the Trade.

If Wardens seal Stuffs which shall be found defective by Jury, such Jury may set Fines on the Wardens of 40s. for every Stuff, but Wardens shall have double Damages for unjust Vexation.

Persons convicted forfeit 20l.

Persons convicted before the Mayor, or a Justice of the City or County, by Confession, or Oath of two Witnesses, of counterfeiting the Seal or Sealing therewith, or removing the Seal from one Piece to another, forfeit 20l.

Every one must have his proper Mark upon every Piece made by him, or forfeit 3s. *per* Piece to the Poor of the Trade.

How Forfeitures are to be levied.

The Forfeitures are to be levied by Distress, &c. by Warrant from Mayor or Justice, or by Action of Debt, Indictment or Information. All Yarns and Worstedes must be reeled on a Reel of a Yard about, and every Reel Stuff must have fourteen Lees.

All Makers of Stuffs, &c. in Norwich, may be made Free for 5l.

By Stat. 9 Geo. 1. c. 9. it is enacted, That all Manufactures or Makers of Stuffs made of Wool, or in which there is any Mixture of Wool, and all Makers of Worsted into Yarn, who are not Journeymen or Servants for Hire, Master Weavers, and Master Woolcombers; and all Persons dealing or employing Servants and Journeymen in any such Manufactures, or having any Interest, Share or Partnership therein living in *Norwich*, shall be made Free, and admitted Freemen of that City, on their Request to be made at any Assembly of the Corporation of the said City, paying not exceeding 5l. for such Admission and Freedom; and all Persons to be made Free shall take the usual Oaths, or being Quakers, shall take the solemn Affirmation.

If follow that Trade without being made Free forfeit 10l.

If any Person (except Servants and Apprentices during their Service) who is any such Manufacturer, or Dealer, &c. presume to exercise any of the said Manufactures, or be otherwise interested therein, not being made Free, and being convicted thereof on a Prosecution commenced within six Months after the Fact committed, he shall forfeit 10l. for every Calendar Month he shall exercise any

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any of the ſaid Manufactures, or be concern'd therein, next after the third quarterly Aſſembly of the ſaid Corporation, to be recovered by Action of Debt, &c. brought by the Chamberlain, for the Uſe of the Mayor, Sheriffs, Citizens, and Commonalty of the City, in any Court of Record at *Weſtminſter*.

Nuſances. See Highways.

EVERY one may in a peaceable Manner aſſemble or meet Company, to do any lawful Thing, or to remove or caſt down any common Nuſance. *Dalt.* 107. *Crompt.* 66.

Every common Nuſance done in the King's Highway is puniſhable in a Court-Leet.

Erecting of a Wall, Part on his own, and Part on another's Land, the other may pull down that Part, though the Owner's Part falls too. *3 Cro.* 269.

An Action of the Caſe lies as well as an Aſſiſe, for a Nuſance of ſtopping his Way to his Common, though the Inheritance comes in Queſtion. *3 Cro.* 845.

If any Perſon water Hemp or Flax in any River, running Water, Stream or Brook, or common Pond, where Beaſts are uſually watered, he ſhall forfeit 20 s. a Moiety to the Party grieved, or any that will ſue; the other to the King, to be ſued for in any Court of Record.

Importation of Cattle from *Ireland*, declared to be a common Nuſance, by *18 Car. 2. c. 2.*

If a Nuſance be in the Highway, every one may abate it. *Jones* 222.

It is a Nuſance to ſtop a River with Earth, by which the Land is drowned. *Leon.* 222.

A Brew-houſe, Tan-houſe, &c. newly erected, may be a Nuſance to a private Houſe. *Palm.* 530.

To erect a Rope-dancer's Stage at *Charing-Croſs*, was adjudged a Nuſance. *Mod. Rep.* 76.

Alehouſes diſorderly kept.

Bawdy-houſes.

Brew-houſes.

Bridges, Annoyances in them.

Cottages unlawful.

Eves-droppers.

Gaming-houſes.

What are common Nuſances.

Highways,

Highways, Annoyances in them.

Inmates.

Melting-houses for Candles.

Rivers, Annoyances in them.

Scolds, (common).

Stages for Mountebanks, or Rope-dancers.

Making, Selling, or Throwing Squibs, Rockets, Serpents, &c.

All these are publick Nuisances, for which an Action on the Case will not lie, but an Indictment against the Offender, who being convicted shall be fined and committed 'till he pay it.

N. B. The Indictment must conclude *ad commune nocummentum omnium ligeorum*, &c.

What private Nuisances.

Stopping another Man's Lights, or Building an House so near to another, that the Water falls on it when it rains, are private Nuisances; but this may be justifiable by the Custom of *London*, if upon an old Foundation. Vide *Calthrop's Rep.* So is Setting up a Brick-kiln or Hogsty.

Party grieved may remove them.

These and the like are private Nuisances, for which an Action on the Case will lie, but no Indictment. And both for common and private Nuisances, the Party grieved may enter on the Ground of the Offender, and with proper Instruments remove them; and if he is indicted either for a Trespass or a Riot, he will only be fined in a small Sum, if convicted.

Court will not admit the Offender to a Fine 'till Nuisance is removed.

Where a Man is indicted for a Nuisance, the Court never admits him to a small Fine, 'till the Nuisance is removed, which must be proved by Oath, or by the Certificate of two Justices; and the Defendant shall never be allowed to make any Objections against the Indictment 'till he hath pleaded to it. *Dalt.* 206.

Offenders must not be punished without being called to answer.

But in these Cases, as in all others, Offenders ought not to be punished without being called to answer for themselves; for they have Liberty to traverse the Matter alledged against them, though it is generally held that they cannot traverse against a Presentment made by a Justice of Peace upon his View. *Dalt.* 159.

Passengers may remove Nuisances in the Highway.

And as to Nuisances or other Injuries on the Highways, by digging Ditches, making Cross-Hedges, laying Logs of Timber, or any other Thing, which in some Measure may obstruct the Passengers, any Person may remove them at Common Law, but cannot convert the Materials to his own Use. But in such Cases no one Person can have an Action for obstructing the Highway; but the Remedy is by Presentment at the Leet, or by Indictment, unless any Man hath a particular Damage; for then he may have



an Action on the Caſe, &c. as ſtopping a Way to a Common is a Nuſance, for which an Action on the Caſe lieth, though the Inheritance ſhould come in Queſtion.

1 *Inſt.* 56. 3 *Cro.* 845. 2 *Roll.* 137.

Men may meet in a peaceable Manner, and with proper Inſtruments, to remove a Nuſance, but not in greater Numbers than are needful for that Purpoſe.

All Indiſtments for Nuſances ought to be certain, both as to the Place from which the Way doth lead, and to the Place where it doth lead; but there is not any Neceſſity to ſhew that it leads to a Market-Town. But it is neceſſary to ſhew in what Place the Nuſance was done, and to what Parts of the Highway it did extend, ſhewing how many Feet in Length and Breadth it contained, becauſe without ſuch Certainty the Defendant cannot make a Defence, nor the Court judge of the Greatneſs of the Offence, that they may the better ſet a Fine; therefore an Indiſtment for ſtopping a great Part of the Highway at S. is not good, becauſe of its Uncertainty, for the Place is not ſufficiently ſet forth.

It is likewise neceſſary to ſet forth, that the Way, wherein the Nuſance was done, is a common Highway, or that it is a Footway to a Church; but then it muſt not ſet forth, that it is a Footway for all the Pariſhioners of S. but a Footway generally leading to the Church of S.

The Owner of the Glaſs-houſe at *Lambeth* was indiſticted for maintaining that Houſe, being a Nuſance, and was convicted and fined; and it was moved, that by the Act of General Pardon the Defendant was excuſed and diſcharged, both as to the Fine and the Abatement of the Nuſance; but the Court held that he ſhould be diſcharged only as to the Fine, but not as to the Abatement; for that is not a Punishment of the Party, but a Removal of that which is a Grievance to other People; and any Perſon may abate a common Nuſance. 2 *Salk.* 458. *Rex & Regina verſus Wilcox.* *Hill.* 1 *W. & M. B. R.*

## Oak-Trees and Bark.

1 Jac. 1. c. 22.

**B**Y Stat. 1 Jac. 1. c. 22. No Person shall engross any Oaken Bark with Intent to sell the same again, on Forfeiture of the Bark or Value. No Person shall sell any Oaken Trees fit to be barked where Bark is worth 2s. a Cart-Load, over and above the Charge of Barking and Pilling (Timber only excepted, for necessary Reparations and Buildings of Houses, Ships, &c.) but between the First of *April* and the Last Day of *June*, on Forfeiture of every such Oaken Tree, or double the Value thereof. No Person whatsoever shall use for the King's Use, &c. (except as before excepted) any Oaken Trees fit to bark, but in Barking-time, &c. on Forfeiture of 40s. for every Tree, Lops, Tops, &c. to Party grieved. Forfeiture to be divided into three Parts; King, Prosecutor, and to the City, &c. or Lord of the Liberty, where Offence committed. Determination at Quarter-Sessions.

## Oaths.

• An Oath, what.

Who may administer it.

Where binding.

Where not.

**A**N Oath here is a solemn Calling or Appealing to God Almighty as a Witness of the Truth of what we affirm or deny, in the Presence of those who are duly authorized to administer it to us; and it is call'd corporal, because in taking it the Party is obliged to lay his Hand on and kiss the Holy Gospel. For in this Kingdom none can or ought to administer an Oath but those who are warranted by legal Authority of the Common or Statute Law; and therefore it is that our Statutes do so often give Power to Justices of Peace to administer Oaths. 2 *Inst.* 479, 719.

Wherefore if an Oath be imposed on a Man by those who have no legal Authority, or it be taken before a Magistrate who have no Authority to administer it, it is void: But if it be voluntary in a Spiritual Matter and false, *viz.* If a Woman swear to marry a Man, and doth it not, she may be punished in the Ecclesiastical Court

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*pro laesione fidei.* Cro. Eliz. 469, 470. Knight versus Russhworth.

Peers are sworn as Witnesses for Proof; but when they are the Defendants, they answer upon their Honour. When Peers are sworn, when not.

Jones 154. The Earl of Lincoln's Case.

The Oaths of Allegiance and Supremacy were enjoin'd by 1 Eliz. c. 1. and 3 Jac. 1. c. 4. See by whom and before whom they were to be taken. 1 Eliz. c. 1. 5 Eliz. c. 1. 3 Jac. c. 4, 5. 7 Jac. 1. c. 6. Vide Tit. Recusants. Oaths of Allegiance and Supremacy abrogated.

Justices of Peace might grant a Warrant to bring any before them, to take the Oath of Allegiance.

The Lord Vaux was indicted on the Stat. 3 & 4 Jac. Co. 12. Rep. 132. c. 4. for not taking the Oath of Allegiance; and being convicted on his own Confession, had Judgment of *Præmunire*.

But the Oaths of Allegiance and Supremacy were abrogated by Stat. 1 W. & M. c. 8. and new Oaths appointed; and by the several subsequent Statutes of 7 & 8 W. 3. c. 24. 12 W. 3. c. 2. 13 & 14 W. 3. c. 6. 1 Ann. c. 22. and 4 Ann. c. 8. 6 Ann. c. 14. 8 Ann. c. 14.

Several Alterations and Regulations have been made, 1 Geo. 1. c. 13; but the last Act was made 1 Geo. 1. c. 13. by which all Persons in Place, Peers and Commoners, all Lawyers, Attornies, all Preachers and Teachers, &c. except (a) Constables, all Persons teaching School, or reading to Pupils in Universities, Heads of Colleges, &c. shall take the Oaths hereafter mentioned, viz. (a) The Oath of a Constable; ante 245.

*I A. B. do sincerely promise and swear, &c.*

*I A. B. do swear that I do from my Heart abhor, &c.*

*I A. B. do truly and sincerely acknowledge, &c.*

All which see in the Beginning of this Treatise, p. 7 and 8.

N. B. By Stat. 7 & 8 W. 3. c. 24. it is a *Præmunire* for any Lawyer to practice after 25 May, 1696, not having before taken the Oaths, and made and subscribed this Declaration.

*I A. B. do declare, that I do believe that there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Element of Bread and Wine, at or after the Consecration thereof, by any Person whatsoever.*

By 1 Geo. 1. c. 13. aforesaid, all Persons, on taking the said Oaths, must subscribe their Names, or make their



their Mark, and all Persons at Eighteen Years of Age may be offered the said Oaths. All Persons, within Three Months after taking a Place or Business upon them, must take the Oaths at *Westminster* or Quarter-Sessions: Not to extend to Persons beyond Sea, provided taken within Three Months after Return; for Neglect or Refusal, forfeit their Office or Employment. Any acting after such Neglect, or, &c. on Conviction, shall be disabled to sue, or be Guardian, Executor, &c. and incapable of any Legacy, &c. or to vote at Elections, besides the Sum of 500*l.* to him who will sue for the same at Sessions or *Westminster*; 2*s.* for administering the Oath. Two Justices, or Persons especially commissioned by his Majesty, &c. may tender the Oaths to any suspected Person to be dangerous or disaffected, &c. Refusal of taking the Oaths must be certified to Quarter-Sessions, &c. and there recorded and certified into Chancery or King's Bench; such Person shall be adjudged a Popish Recusant Convict, and to be proceeded against as such. Two Justices, or, &c. may summon any Person to appear before them at a certain Day and Time, to take the Oaths. Persons so summoned refusing, Proof on Oath of such Summons being served, Justices must certify the same to next Quarter-Sessions to be entered as aforesaid. Persons neglecting to take the Oaths at Quarter-Sessions, the Names of the Persons so certified being publicly read at the said Sessions, after that such shall be adjudged Popish Recusants Convict, and be proceeded against as such, as before. See *Penalty on Heads of Colleges neglecting to take such Oaths, &c.* Persons disabled recapacitated to enjoy again such Places, &c. upon taking the Oaths, unless such Places, &c. are disposed of. Peers and Commoners in Parliament must take the Oaths, and on Neglect must suffer as before.

Exceptions for Offices of Inheritance where Persons concerned appoint a Deputy, not to extend to the Office of Tithingmen, Overseer of the Poor, Churchwardens, Surveyors, or any the like inferior Civil Office, or to Game-keepers, Park-keepers, &c. Oaths in this Act to be taken in Lieu of former Oaths. Persons having Places in *Ireland* may take the Oaths in *Great Britain*, to qualify themselves to continue or enter on such Places, before one of the Barons of the Exchequer.

5 & 6 W. & M.  
c. 11.

By 5 & 6 W. & M. c. 11. Every Contributor having an Annuity for Life, or Lives, &c. and his or her Executors, &c. demanding Money, must either produce a Certificate of the Life of the Nominee, signed by the Minister or Churchwardens of the Parish; or make Oath

of

of the Life of such Nominee, upon the Day of Payment, before one or more Justices of the County, City, or Town where such Person, at the Time of the making Oath, shall reside. Dissenters are bound to take the Oaths above-mentioned, and to subscribe the Declaration mention'd 30 Car. c. 2. c. 1.

Justices in Sessions are to tender and administer the Oaths to Persons who shall offer themselves.

Those Dissenters who scruple taking any Oaths, must make and subscribe a \* Declaration of Fidelity, and likewise a Profession of their Belief. 1 W. & M. c. 18. \* Vide ante, 301.

They must likewise make and subscribe the Declaration mentioned in the Statute of 30 Car. 2. cap. 1.

N. B. That the Act made 1 W. & M. c. 18. entitled, *An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws*, does not extend to any Person, who by writing or speaking, denies the Trinity.

Any Justice of Peace may at any Time require a Dissenter to make and subscribe the Declarations, and to take the Oaths and Declaration of Fidelity. If he scruple the making any Oath, upon Refusal may commit him to Prison without Bail, and certify his Name in the next Sessions where he resides.

If the Person committed shall, upon a second Tender at the Sessions, refuse, &c. it shall be recorded, and he shall then be taken for a Popish Recusant Convict.

By Stat. 7 & 8 W. 3. c. 24. the solemn Affirmation of the Quakers is to go for an Oath; as, that *I A. B. do declare in the Presence of Almighty God the Witness of the Truth of what I say, &c.* But by the Stat. of 8 Geo. 1. c. 6. this is altered into this Form, *viz. I A. B. do solemnly, sincerely and truly declare and affirm, &c.* And if what he affirms be false, he is liable to the same Punishment as other Persons in Cases of Perjury. But no Quaker shall be permitted to give Evidence in any criminal Cause by Affirmation, or serve on Juries, or bear any Office or Place of Profit in the Government.

An Offender shall not be examined upon Oath; *nemo tenetur prodere seipsum*; but in Cases of Felony the Information of Witnesses ought to be on Oath; otherwise it cannot be given in Evidence. Cro. 193. Dalt. 411.

Oath of being robbed, &c. may be taken by a Justice of Peace out of the County. 1 Cro. 213.

Any Justice may at any Time require a Dissenter to make and subscribe the Declarations. And if he refuse, how punished.

Quakers Affirmation.

*Quære*, If Justices of Peace may examine upon Oaths Sureties of their Sufficiency : Justices of Peace in their Sessions may do it. *Dalt.* 275. *Cro.* 195.

Oath may be required of a Buyer of Horse stolen, what Money he paid, that the Right Owner, upon paying it, may have his Horse again. 31 *Eliz.* c. 12.

No Person to  
scruple to take  
an Oath.

By Stat. 13 & 14 *Car.* 2. c. 1. No Person may maintain that the Taking of an Oath in any Case whatsoever (tho' before a lawful Magistrate) is unlawful, and contrary to the Word of God ; nor may wilfully refuse to take an Oath by the Laws of the Land being duly tendered ; nor may persuade any other to forbear the Taking of the same so tendered ; nor go about by Printing, Writing, or otherwise, to maintain that the Taking of an Oath in any Case whatever is unlawful, upon the Penalty of five Pounds for the first Offence, as in the Case of Quakers.

N. B. Quakers are exempted from the Penalties of this Act, per 1 *W. & M.* c. 18.

Oath ex Officio  
abolished.

No Ecclesiastical Judge or Officer may now impose the Oath *ex Officio*, or any such like Oath, upon any one at this Day. 13 *Car.* 2. c. 12.

Perjury is cognizable in the Sessions by 5 *Eliz.* cap. 9.

How the Oaths  
are to be tendered.

It has been made a *Quære*, Whether, when the Oaths are tendered, to make a Man a Refuser, they should not be formally tendered, *viz.* by having the Oath and the Bible before him. And it seems therefore, that if one is authorized to give it shall only ask one bound to take, whether he will take it, and not tender the Book to take it, that this is not sufficient ; and *quære*, if he should not have Time to read it, or to hear it read.

Two Justices  
to administer  
an Oath to the  
returning Officer  
of Poll-Books.

The two next Justices (*Quorum unus*) are to administer an Oath to the Sheriff, or Returning Officer, upon his delivering over to the Clerk of the Peace the Poll-Books of the Election of Knights of the Shire within twenty Days after the Election, that he has delivered over all the said Books without Embezzlement or Alteration ; or where there are more Clerks of the Peace than one, the original Books to one, and attested Copies to the rest. 10 *Ann.* c. 23.

A Cer-



A Certificate for one who hath taken the Oaths, and subscribed the Declaration, 1 W. & M. c. 8.

Middl. ff. **T**HESE are to certify, that J. L. of the Parish of C. in the County aforesaid, Esq; came before His Majesty's Justices of the Peace at the Sessions held at H. &c. on Thursday, &c. and then and there before the said Justices at the said Sessions, did take the Oaths mentioned in a Statute made in the first Year of the Reign of the late King William and Queen Mary, intituled, An Act for abrogating the Oaths of Allegiance and Supremacy, and appointing other Oaths; and did likewise then and there make and subscribe the Declaration mentioned in a Statute made in the 25th Year of the Reign of the late King Charles the Second, intituled, An Act for preventing Dangers which may happen from Popish Recusants; and that what he did then and there concerning the same is register'd, according to the Direction of the Act first above mentioned. 1 W. & M. c. 8.

Signed, &c. Dated, &c.

C. D. Cler. Pa.

For all Sorts of Forms of Oaths, see the Book of Oaths, and Dalton's Country Justice of Peace.

For the Oath of a High-Sheriff and Under-Sheriff, *vid. postea* Title Sheriff.

Here follow the Forms of some Oaths, which some way relate to the Office of a Justice of Peace.

The Oath to be taken by the Clerk of the Peace in open Sessions, before he enters upon his Office.

**I** A. B. do swear, that I have got, nor will not pay any Sum or Sums of Money, or other Reward whatever, nor given any Bond or other Assurance to pay any Money, Fee or Profit, directly or indirectly, to any Person or Persons whomsoever, for the Nomination and Appointment of me to be Clerk of the Peace for this County. 1 W. & M. c. 21.

So help me God.

## The Oath of a Coroner.

**Y**OU do swear that you well and truly shall serve our Soverign Lord the King, and his Liege People, in the Office of a Coroner, and as one of his Majesty's Coroners of this County of K. and therein you shall diligently and truly do and accomplish all and every Thing and Things appertaining to your Office, after the best of your Understanding, Wit and Power, both for the King's Profit and the Good of the Inhabitants within the said County, taking such Fees as you ought to take by the Laws and Statutes of this Realm, and no otherwise.

So help you God, &c.

## The Oath of a Commissioner of Sewers.

32 H. 8. c. 5.  
13 & 14 Ed. 6.  
c. 8.  
3 Jac. 1. 14.  
Coke Institut.  
4 p. 275.

**Y**OU shall swear that you, to your Understanding, Wit, and Power, shall truly and indifferently execute the Authority to you given by this Commission of Sewers, without any Favour, Affection, Corruption, Dread or Malice, to be born to any manner of Person or Persons: And, as the Case shall require, you shall consent and endeavour yourself, for your Part, to the best of your Knowledge and Power, to the making of such wholesome, just, equal and indifferent Laws and Ordinances, as shall be made and devised by the most discreet and indifferent Number of your Fellows being in Commission with you, for the due Redress, Reformation and Amendment of all and every such Things as are contained and specified in the said Commission: And the same Laws and Ordinances, to your Understanding, Wit and Power, cause to be put in due Execution, without Favour, Dread, Malice or Affection.

So help you God, &c.

## The Oath of an Excise-man.

12 Car. 2. c.  
23, 24.

Two Justices  
who must cer-  
tify (the tak-  
ing of this  
Oath) to the  
next Quarter-  
Sessions, there  
to be recorded.

(With this must be taken the Oaths mention'd in 1 Gul.  
& Mar. cap. 8.)

**Y**OU shall swear to execute the Office of (name the Place) truly and faithfully, without Favour or Affection, and shall from Time to Time true Account make, and deliver to such Person or Persons as his Majesty shall appoint to receive the same; and shall take no Fee or Reward for

for the Execution of the said Office, from any other Person than from his Majesty, or those whom his Majesty shall appoint in that behalf.

### The Oath of a High Constable.

**Y**OU shall well and truly, according to your Knowledge, Power, and Ability, execute the Office of an High Constable so long as you shall continue in that Office.

### The Oath of a High Constable upon delivering his Presentments.

**Y**OU shall true Presentment make to the Grand Inquest of all Offences and Misdemeanors committed or done within your Hundred, and are in any wise come to your Knowledge, and belong to you now to present without Concealment.

So help you God, &c.

### The Oath of a Petty Constable.

**Y**OU shall swear, that you shall well and truly execute the Office of a Constable (or Borsholder) for the Parish of A. for this next Year, (or half a Year, as the Case is) and until another be sworn in your Room, or you shall be legally discharged thereof.

So help you God, &c.

### The Oath of a Grand Inquest.

**Y**OU shall diligently inquire, and true Presentment make, of all such Matters, Articles and Things, as shall be given you in Charge, as also of all other Matters and Things as shall come to your Knowledge, touching this present Service; his Majesty's Counsel, your Fellows and your own, you shall keep secret: You shall present no Person for Envy, Hatred or Malice; neither shall you leave any one unpresented for Fear, Favour or Affection, Reward or Hopes thereof, but in all Things you shall present the Truth, the whole Truth, and nothing but the Truth, to the best of your Knowledge.

So help you God, &c.



## The Jury's Oath.

**T**HE same Oath that your Foreman hath sworn to observe, perform and keep on his Part, you do swear to observe, perform and keep on your Part.

So help you God, &c.

## The Oath of those who shall give Evidence upon Bills of Indictment.

**T**HE Evidence that you shall give to the Grand Inquest upon this Bill of Indictment against A. B. shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God, &c.

## The Oath of a Jury-man upon a Traverse.

**Y**OU shall well and truly try the Issue of this Traverse between our Sovereign Lord the King and A. B. and a true Verdict give, according to your Evidence.

So help you God, &c.

## The Oath given to a Jury-man upon Life and Death.

**Y**OU shall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give, according to your Evidence.

So help you God, &c.

N. B. Every Juror is to lay his Hand on the Book, and look toward the Prisoner.

## The Oath of Witnesses.

**T**HE Evidence that you and every of you shall give to the Court and the Jury, for our Sovereign Lord the King against the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God, &c.

The

The Oath given to a Bailiff or Serjeant that attendeth on any Jury or Inquest at an Assize.

**Y**OU shall well and truly keep every Person sworn of this Inquest together, in some private and convenient Room without Meat, Drink, Lodging or Fire, Candle excepted: You shall not suffer any Person whatsoever to speak to them, or any of them, until such Time as they be agreed of their Verdict, unless it be to ask them whether they be agreed of their Verdict or no, without Leave of the Court.

So help you God, &c.

The Oath of a Jury of Women returned to try whether a Woman convicted, that pleads her Belly, be Quick with Child, or no.

**Y**OU the Fore-Matron of this Inquest do swear, that you shall search and try the Prisoner at the Bar, whether she be with Child of a quick Child, or no, and thereof a true Verdict give, according to the best of your Judgment.

So help you God, &c.

To the rest of the Jury.

**T**HE same Oath, which A. B. your Fore-Matron hath taken on her Part, you, and every of you, shall well and truly observe and keep on your Parts.

So help you God, &c.

The Oath of him who craves the Peace against another.

**T**HE Peace which you require against A. B. is not out of any Ill-will or Malice which you bear to him, but merely to preserve your Life, House, Goods or Chattels,  
S f 4 from

## Oaths.

*from any bodily Harm or Mischief, which he by himself, or any other by his Procurement, may attempt to do you.*

So help you God, &c.

An Oath to be given upon Examination,  
or upon Information.

**Y**OU shall true Answer make to all such Questions as shall be demanded of you concerning the Beating of A. B. You shall speak the Truth, the whole Truth, and nothing but the Truth.

So help you God, &c.

The Oath of him that giveth Information.

**T**HE Information that you shall give on the Behalf of our Sovereign Lord the King's Majesty against A. B. shall be the Truth, the whole Truth and nothing but the Truth.

So help you God, &c.

An Oath upon a Leading Question.

**Y**OU shall true Answer make to all such Questions as shall be demanded of you.

So help you God, &c.

An Oath to be taken by all Clerks of the Courts of King's Bench and Common Pleas, Clerks of Assize, Clerks of the Peace, Town-Clerks, Clerks of Sewers, Clerks of the Markets, and others to whom it belongeth to make Returns of Estreats into the Exchequer.

22 & 23 Car. 2.  
c. 22.  
4 & 5 Gul. &  
Mar. c. 24.

**Y**OU shall swear, that these Estreats, now by you delivered, are truly and carefully made up and examined, and that all Fines, Issues, Amerciaments, Recognizances and Forfeitures, which were set, lost, imposed or forfeited, and in right and due Course of Law, ought to be estreated in the Court



*of Exchequer, are to the best of your Knowledge and Understanding, therein contained : And that in the same Estreats are also contained and expressed all such Fines as have been paid into the Court, from which the said Estreats are made, without any wilful or fraudulent Discharge, Omission, Misnomer or Defect whatsoever.*

The Oath of an Appraiser. Vid. before p. 250.

So help you God, &c.

An Oath to be administred by the next Justice of Peace, (Judge-Advocate or his Deputy) to every Officer present at the Trial of Offenders by Courts Martial, (where the Offence may be punished by Death) before any Proceeding be had thereupon.

**Y**OU shall well and truly try and determine, according to your Evidence, the Matter now before you, between our Sovereign Lord the King's Majesty and the Prisoner to be tried.

So help you God, &c.

## **Orchards.**

**B**Y Stat. 37 Hen. 8. cap. 6. they who bark Fruit-Trees, forfeit treble Damages to the Party grieved, in an Action of Trespafs. 37 H. 8. c. 6.

By Stat. 43 Eliz. c. 7. Persons unlawfully cutting and taking Corn growing, robbing Orchards, digging up or taking away Fruit-Trees, breaking of Hedges, Pales or other Fences, cutting or spoiling of Woods, Underwoods, or the like Offences ; and the Accessories thereunto being lawfully convicted by Confession, or one Witness on Oath, before one Justice, shall pay to the Person grieved, for the first Offence, such Damages as the Justices shall award ; if not able to pay, then to be whipped by the Conitabie ; and for every other Offence to be whipp'd. Constable neglecting his Duty, to be committed till he does it : In Justice's own Case, he must associate some other Justice with himself. 43 Eliz. c. 7.

The Prosecution must be in six Weeks by 15 Car. 2. cap. 2.

A War-

## A Warrant against a Robber of an Orchard.

Essex, *ss.* **W** Hereas it hath been duly proved before me R. B. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, That T. P. of, &c. hath, within six Weeks last past, robbed the Orchard of, &c. (or as the Case is) contrary to the Laws in that Case made and provided: I do therefore hereby \* appoint the said T. P. within five Days after Notice hereof, to pay unto the said J. S. 9s. in Recompence and Satisfaction for the Wrong so done, as aforesaid: And if the said T. P. shall not pay the same, that then you inform me thereof, that such farther Proceedings may be had against him for the said Offence, as the Law requireth: And hereof fail not. Given, &c.

\* If the Justice doth not think him able, he may order him to be whipped. Like Punishment for an Accessary.

## Upon Non-payment to be whipped.

Sussex, *ss.* **W** Hereas it hath been duly proved before me R. B. Esq; being a Justice of the Peace for the County aforesaid, That, &c. (as in the former Warrant) And whereas the said T. P. hath not paid or discharged the said J. S. for the Damages done to him, the Sum of 9s. by me appointed for him to pay: Therefore I do hereby Order, that the said T. P. be forthwith committed to the said Constable of, &c. to be whipped, which you the Constable are hereby required to do, or cause to be done, at your Peril. Given under my Hand, &c.

Overseers of the Poor. See Poor.

## Outlawry.

Outlawry  
what.

When a Man is  
said to be Out-  
lawed.

**T** HIS is when a *Capias*, *Alias* & *Pluries* have been awarded against an Offender who hath not appeared, but the Sheriff returns a *non est inventus*; then there is a Writ of Exigent made out, directed to the Sheriff to call him in five successive County-Courts which are held Monthly, requiring him to appear, (but the County-Courts are held oftner in London) and if he do not, then he is Outlawed or Exlex, that

is, deprived of the Law, and out of the King's Protection.

Which was so great a Punishment, that in old Times he was said to have *Caput Lupinum*, and might have been killed by any who met him ; and this continued till the Time of K. *Edward 3.* when it was made lawful for none but only the Sheriff to kill him, nor he neither, unless he had a Warrant so to do.

But now Outlawries are become frequent in Personal Actions ; the Effect of which is, *viz.* Forfeiture of Goods and Chattels to the King ; and if for Felony, then it is Forfeiture of his Lands, in Fee or for Life, and his Goods, &c.

When a Man is outlawed for Felony, being attainted by the Outlawry, his Goods are forfeited to the King, and his Body at his Disposal ; and therefore it was a Question, Whether such an Outlaw might be taken in Execution at the Suit of a Creditor : But it was held that he is liable to such Execution ; but the Sheriff may chuse whether he will execute it or not ; and that if the Law should be otherwise, then the Party might take Advantage of his own Default ; for he might suffer himself to be outlawed, and then get a Pardon and deceive his Creditors. *Moor 179, 753. Owen 69.*

A Man who held Lands of the King, was outlawed for Murder ; the King seised the Lands, and gave them to another, and then the Outlawry was reversed ; and the Question was, Whether the Person might re-enter, or first Petition to the King ? And it was held that he might re-enter upon the Grantee, because there was no Record of Attainder to put him on his Petition.

2 Cro. 164.

Error was brought to reverse an Outlawry for Murder ; the Error assigned was, that *tempore promulgationis utlagariæ & diu antea & post*, he was beyond Sea. It should have been *tempore* of the Exigent awarded ; for if he depart after that Time, and is then outlawed, he shall never reverse that Outlawry, because he fled from Justice on set Purpose ; but the Attorney General confessing the Error, it was reversed. 1 Cro. 464.

Outlaw anciently might be killed by any Body.

Not so now.

One outlawed for Felony may be taken in Execution at the Suit of a Creditor.

Lands forfeited and given away, restored on Reversal of the Outlawry.

Outlawry reversed by Writ of Error.



## Panels of Juries.

Panels may be reformed by Justices.

**A**LL Panels of Juries to be returned, which be not at the Suit of any Party, to be made by any Sheriff, &c. before Justices of Gaol-Delivery, or Justices of Peace (*Quor.* 1.) in their open Sessions, to enquire for the King, shall be reformed by Justices at their Discretion; 20*l.* Penalty for Sheriff, &c. not returning the Panels so reformed, to the King and Professor. 3 *H. 8. c. 12.*

## Pamphlets and News-Papers.

The Stamp-Duties upon Pamphlets.

**B**Y Statute 10 *Ann. c. 19.* All Papers called Pamphlets, shall for every Half-Sheet pay a Half-penny; if larger than a Half-Sheet a Penny, and if larger than a Whole Sheet, and not six Sheets in Octavo, or in a less Page, or not exceeding twelve Sheets in Quarto, or twenty Sheets in Folio, 2*s.* Sterling for every Sheet of Paper in one printed Copy; and for every Advertisement in the *London Gazette*, or other printed Paper made weekly Publick, one Shilling. And they are to be stamped accordingly.

How Offences may be heard and determined.

Offences in printing, selling, or exposing to Sale any Pamphlet, &c. against this Act, may be heard and determined by two or more Justices within their Jurisdiction. At any Time within three Months after the Offence, upon Complaint made, they may summon the Offender and Witnesses, and may examine them on Oath; or for not appearing, upon Proof of Notice given, may proceed, though the Offender doth not appear, and give Judgment. And if convicted either upon View of the Justice, or upon such Information, may issue Warrants to levy the Penalty of 10*l.* on the Goods of the Offender by Distress and Sale, if not redeemed within six Days; and if such Distress cannot be had, may commit him 'till the Penalty is paid.

Appeal to Quarter-Sessions.

Those who are grieved may appeal to the next Quarter-Sessions, who may examine Witnesses upon Oath, and finally determine, and may then issue Warrants to levy the Penalty.

The

## Pamphlets and News-Papers.

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The Penalty may be mitigated by the Justices ; but then the Officers and Informers must be allowed their reasonable Costs and Charges over and above the said Mitigation, and so as the Mitigation must not be less than a fourth Part of the Fine over and above the said Costs and Charges.

Persons sued for putting the Act in Execution, may plead the General Issue, and give this Act and any Special Matter in Evidence ; and if he recover shall have treble Costs.

Printing a Pamphlet above one Sheet, published within the weekly Bills of Mortality, and not carrying it within six Days to the head Office for stamping ; and if printed elsewhere, and not brought to the head Collector of the Stamp-Duties, within fourteen Days, the Printer and Publisher shall lose the Profit of the Copy of such Pamphlet for which the Duty is not paid, and shall forfeit 20*l.* with full Costs.

If the Printer's or Publisher's Name is not printed thereon, the Penalty is likewise 20*l.*

One Moiety of these Penalties is to the Crown, the other to the Informer.

But some News-Writers taking Advantage of the Paragraph in the Act 10 *Annæ*, c. 19. wherein for all Pamphlets larger than one whole Sheet, and not exceeding twenty Sheets in Folio 2*s.* for every Sheet of Paper in one printed Copy, and no more was to be paid, contrived their News-Papers so as they took up one Whole Sheet, and one Half Sheet, and no more ; by which means, they for many Years, paid only 3*s.* for each whole Impression of their News-Papers. Which being taken Notice of in Parliament, a Clause was inserted in a Stat. made 11 *Geo.* 1. whereby all Journals, Mercuries, and News-Papers printed on one Sheet and Half a Sheet of Paper, shall not for the future be deemed or taken as Pamphlets, to be entred and pay only 3*s.* for each Impression thereof ; but there shall be paid for every Sheet of Paper on which any Journal, Mercury, or other News-Papers whatsoever shall be printed, a Duty of one Penny ; and for every Half Sheet thereof one Half-penny, during the Term mentioned in the Act 10 *Ann.* c. 10. to be levied in the same Manner, and subject to the same Penalties, &c. as in the said Act of 10 *Ann.* c. 19. or any other Act relating to those Duties, is contained.

Penalty of not carrying Pamphlets to be stamped.

A Fetch of the News-Writers, &c.

# A Warrant to levy the Penalty by 10 Ann. cap. 19.

10 Ann. c. 19.

Essex, *ff.* **W** Hereas Complaint hath been made unto us whose Names are subscribed, two of his Majesty's Justices of Peace for the said County, that R. G. of, &c. did on the Nineteenth of August last past at D. in the said County, expose to Sale one Sheet of Paper commonly called a Pamphlet, not being stamp'd as it ought to be by Law; and the Duty not being paid for the same: We thereupon did summon the said R. G. to appear before us at, &c. on Wednesday the Twentieth of August aforesaid, where he did appear accordingly, and was then and there convicted upon the Oath of J. S. of, &c. of the said Offence; by Reason whereof he hath forfeited 10l. according to the Statute in that Case made and provided: Which said Sum of 10l. we did mitigate to 5l. besides the Sum of 10s. which we did allow to the said J. S. for his reasonable Costs and Charges in that Behalf: These are therefore to require you forthwith to levy the said Sums of 5l. and 10s. by Distress of the Goods of the said R. G. and if the same are not redeemed within six Days after the said Distress taken, that then you sell the same, rendring the Overplus to the said R. G. if any such shall be, after reasonable Costs and Charges first deducted; and that you pay 10s. Part thereof to the said J. S. and one Moiety of the remaining 5l. to the King, and the other Moiety thereof to the said J. S. who first informed us of the said Offence. Given, &c.

Papists. See Recusants.  
Partridge. See Game.

## Parchment.

Two Justices to determine Complaints about Parchment.

**C**omplaints being made about seising Parchment, may be heard and determined by two Justices; but an Appeal lies to Quarter-Sessions. 5 W. & M. c. 21. 8 & 9 W. 3. c. 6. 4 Ann. c. 7. 9 Ann. c. 11. 10 Ann. c. 13. 12 Ann. c. 2.

Pardon.



## Pardon.

A Pardon is either { 1. Of Course, or,  
2. Of Grace.

A Pardon is granted of Course, where a Man is convicted of Homicide, *se Defendendo*, or by Chance-Medley; for which see in Tit. **Homicide**. Stat. Glouc. c. 9.

Pardon of Grace is either { 1. General, or,  
2. Special.

By the Law of GOD, no Recompence was to be taken for the Life of a Murderer, who purposely hath committed Murder, but he shall surely be put to Death; *Thou shalt take him from my very Altar, that he may dye*, saith GOD: For Blood defileth the Land, and the Land cannot be cleansed of the Blood that is shed therein (by wilful Murder) but by the Blood of him who shed it. Num. ch. xxxv. ver. 31, 33.

None have Authority to Pardon any Treason, Murder, or other Felony, or any Accessary to the same, save only the King, it being one of his Royal Prerogatives.

Note; if he which hath a Pardon for Felony, *ita quod se bene gesserit versus cunctum populum D'ni Regis*, if afterwards he shall break the Peace, such is holden for none, but that he may be hanged, notwithstanding his Pardon. 10 Ed. 3. c. 3. 3 & 5 H. 7. c. 7. where one was executed upon this Statute for making an Affray after his Pardon, *Br. Coron.*

One Cole was convicted of Burglary, and pardoned, *ita quod bene se gesserit* towards all People: Afterwards he broke the Peace by beating another Man; and this being suggested to the Court, Execution was prayed against him; and the Clerk of the Crown informed the Court that one Whiddon was hanged in the Queen's Reign for the same Cause, after a Pardon; but it is not said what Rule was made in the principal Case.

A General Pardon is that, which is given in Parliament to all Men generally, or with Exceptions to some few Persons. And of this General Pardon the Court ought *ex officio*, and of Duty, both to take Notice and give Allowance, though the Party neither plead it, nor will accept the Benefit of it. But if the Pardon make special Exception of some Persons, then must the Prisoner alledge, that he is none of those who be excepted, unless the

By the Law of GOD, no Pardon for Murder.

None can pardon Treason, Murder, &c. but the King.

One pardoned conditionally, may be hang'd afterwards.

What is a General Pardon.

the Act it self does say that he shall take Advantage by it, without any such pleading: 11 H. 4. 39. *Stanf.* 103. *Lamb.* 536. *Hob.* 67. 3 *Inst.* 233.

A Servant, who had killed his Master, was indicted for Murder without the Word *proditorie*, and was thereupon arraigned and found Guilty. But because the Offence was really Petit Treason, and Petit Treason was then pardoned by the Parliament (5 *Eliz.*) though Murder were therein excepted, Justice *Welsb* thought fit to reprieve the Prisoner, without giving Judgment upon him. *Dyer* 235. *Lamb.* 536.

Cases on General Pardon.

A Man struck another in *Feb.* (13 *Eliz.*) whereof he died in *June* next following, in which mean while all Felonies, Offences, Injuries, and Misdemeanors, were pardoned by Parliament; and he was discharged by that Pardon, because the Stroke was the Offence against the Queen; and that was past and pardoned, though a Death did afterwards ensue upon it. *Plowd.* 421. *Lamb.* 537.

One that had committed Manslaughter, was indicted of Murder, and thereupon Outlawed; afterward the Parliament pardoneth all Offences, &c. except Persons Outlawed or Attainted of Murder; the Party reverseth the Outlawry, and then is arraigned of Manslaughter; and it was much doubted whether he should be discharged by the Pardon; because Persons Outlawed were excepted: Whereas if the Offences only had been excepted, it would have made no great Question. 29 *Eliz.* *Crompt.* *Lamb.* 537.

What a Special Pardon.

A Special Pardon ought to be pleaded under the Great Seal of *Great Britain*; for that Authority, which some Subjects in antient Time had to grant Pardon, is resumed by the Statute 27 H. 8. c. 24.

ought to have a Writ of Allowance, unless a Clause of Non obstante inserted therein.

And with this Pardon the Party ought to bring a Writ of Allowance, testifying that he had found Sureties for his good Port, according to the Statute 10 *Ed.* 3. c. 2. Howbeit that Matter is many Times dispensed with by Means of a *Non obstante*, that may be put into the Pardon. *Plowd.* 502. *Lamb.* 537.

If the Pardon do agree with the Indictment, as well in the Name, Surname and Addition of the Party, as also in the Point of the Offence that is to be pardoned; then is there nothing to be said against it. But if the Pardon be of all Felonies, that will not discharge him of Petit Treason, nor Murder at this Day, (except it contain them in special Words) although at the Common Law before the Statute 13 *Ri.* 2. *Stat.* 2. c. 1. such a Pardon was available enough for them. *Dalt.* 348. *Cro.* 21. 6 Co.

Cases on Special Pardon.

6 Co. 13. but it is good for Accessaries both before and after.

Neither is such a Pardon sufficient to save the Life of a Man that is Attainted of Felony, unless it have Words to pardon the Attainder and Execution. *Cro. 115. Dalt. 348. 6 Co. 13. 9 Ed. 4. 29.* No more than a Pardon of the Attainder and Execution will deliver him, without Words to pardon the Felony it self. *8 H. 4. 22.* So where the Party is abjured for the Death of a Man, the Pardon must of Necessity carry Words of Abjuration. *Fitz. 124. Lamb. 537.*

If the King do Pardon a Gaoler the Escapes of Prisoners being in his Custody for Felony or Treason, that shall extend to negligent Escapes only, and to none other. *Fitz. 37.* So if he pardon two Men all Felonies done by them or any of them, that will not serve them apart; because the first Words be joint, and not several. Whereas all Felonies be of themselves several. *22 Ed. 4. 7.* For in all these and the like Cases, however the Favour of Life may require a large Interpretation; yet forasmuch as the Offence is against Law, the Grace and Dispensation of the Prince may not be strained beyond the Words. *Lamb. 537.* Pardons how to be allowed. *Cro. El. 814. 2 Cro. 495.*

A Pardon for not repairing a Bridge or Highway may discharge the Fine; but the Offence remains, for which the Party is chargeable at the Suit of a Subject. *12 Co. 30.*

When there is no Day in Court to plead a Pardon, the Court will not allow it. *3 Cro. 4.*

Prisoner pleadeth a Pardon, the Justices of Peace, in the Absence of the King's Attorney, may join Issue, that he is one of the Persons excepted. *Lamb. 540. Stamf. 103.*

For General Pardons have now so many Qualifications, Restrictions and Exceptions, both as to Offences and Persons, that the Court cannot take Notice of them without being pleaded; and in the Plea the Defendant must aver, that he is none of the Persons excepted; a Form of which Plea you may see, *3 Inst. 234.*

By Statute *13 Rich. 2. c. 1.* it is enacted, That the Offence shall be specified in the Pardon, otherwise it shall not be allowed; and since that Time it hath been held, that a General Pardon for Murders or Robberies is not good, without reciting the Indictment and Verdict in the Pardon it self. *Moor 752. Sid. 366, 430.*

Mr. Howard was convicted of Murder, and being brought to the Bar, pleaded the King's Pardon, in which all the Proceedings on the Indictment were recited; and that the King pardoned the Killing and Felony, but the

Offence must be specified in the Pardon.

Mr. Howard's Case.



Word *Murdrum* was not in the Pardon, and there was no Writ of Allowance; whereupon Mr. *Howard* was advised to get a better Pardon, otherwise this might be repealed by *Scire Facias* seven Years hence, and he might be executed; and afterwards he had a better Pardon and Writ of Allowance. *Raym.* 13.

No Appeal will lie for Murder after a Pardon for Treason.

*Anno* 31 *Hen.* 8. it was made Treason for a Wife to poison her Husband; and soon after a Woman poison'd her Husband, and was pardon'd; her Son brought an Appeal of Murder; and it was adjudg'd it did not lie, because they were two different Offences; and the Offence being made Treason could not be punish'd as Murder. *Dyer* 50.

In Cases of Treason the Court may allow a Pardon without a Writ of Allowance, but not so in Felony; and therefore, where a particular Pardon is pleaded, it must be *sub Magno Sigillo*, and it ought to have a Writ of Allowance; unless there be inserted a Clause of *Non obstante*, for that dispenses with that Writ. *Cro. Eliz.* 314.

Where an Interest is vested, Words of Restitution are necessary in a Pardon. *Sid.* 168.

Sir Walter Raleigh's Case.

Sir *Walter Raleigh* was Attainted of Treason, 1 *Ja.* 1. and kept Prisoner twelve Years, and then the King gave him a Commission to make an Expedition to *Gayana*, and Authority to execute Martial Law, and Power over the Lives of other Men; he went thither, and return'd unsuccessful; and on his Return was brought to the Bar, and had Sentence and Execution upon the Attainder; tho' he insisted that his Commission, giving him Power over the Lives of other Men, was a Pardon by Implication; but the Court answer'd, that no Man must be pardoned but by express Words, and not by Implication. 2 *Cro.* 495.

A Pardon takes away the Guilt as well as Punishment.

Not only the Punishment, but the very Guilt is taken away by a Pardon; so that a Man is restored to his Credit, and enabled to be a Witness, though he hath been convicted of Felony; but it seems otherwise if the Conviction had been for Perjury, on 5 *Eliz.* c. 9. 1 *Vent.* 349.

Burnt in the Hand in Nature of a Pardon.

Being Burnt in the Hand upon a Conviction of Felony, is in Nature of a Pardon; for by this Punishment he is cleared of the Offence, and is become a lawful Witness. *Raym.* 370.

Nothing vests in the King before Inquisition taken.

Nothing vests in the King till Inquisition found, and therefore a Pardon before an Inquisition found discharges all Forfeitures. 2 *Mod.* 53.

But where once an Interest is vested, a Pardon will have no Effect upon the Goods forfeited, without some Words of Restitution. *Sid.* 168.

A Par-

A Pardon is no Bar to an Appeal, nor to an Execu- Pardon no Bar  
tion, if the Offender be attainted and pardoned of Felony to an Appeal.  
only.

By a Statute made 2 & 3 Ann. c. 19. as soon as the 2 & 3 Ann.  
Judge receives a Warrant under the Sign Manual of the c. 19.  
King for a Pardon, he may direct his Warrant to the  
Sheriff or Gaoler, directing the immediate Delivery of  
such Prisoner out of Custody to such Officer as he shall be  
lifted under, to serve the King either in the Army or Na-  
vy; and the Pardon when passed shall be entred and in-  
rolled.

About the latter End of King Charles the Second's The King can  
Reign, in the Case of one Parsons who had a Pardon for pardon Mur-  
Murder, it was argued by Counsel in B. R. that the der, &c.  
King could not pardon Murder; and because it could proved.  
not be proved by the Law of England, therefore Recourse  
was had to the Scripture, which says, *He who sheddeth  
Man's Blood, by Man shall his Blood be shed.* Gen. ix. 6.  
But this Text must be taken in a limited Sense, and not  
as universally binding, no more than that of *Thou shalt  
take no Satisfaction for the Life of a Murderer; who is  
guilty of Death, he shall surely be put to Death.* For be-  
sides the Case of common Executions and many others,  
wherein it is not only lawful, but absolutely necessary to  
shed Man's Blood, it is plain this Precept was Part of the  
Judicial Law, and, as such, binding only to the Jews; Arguments for  
but the Ceremonial and Judicial Laws being abrogated it.  
ever since the Death of CHRIST, or, at farthest, the  
Destruction of Jerusalem by the Romans, when the  
Jewish Commonwealth and Government were totally ruin'd  
and destroy'd, the Obligation of that Law has ceased ever  
since.

It is true, GOD saith, that a Murderer shall surely be  
put to Death; and it is as true, that in another Place, he  
says, that *whosoever doth any Work on the Sabbath, he shall  
surely be put to Death*; and yet no Man will affirm, that  
the King cannot pardon those who work on the Sabbath.

It is therefore certain, that neither the divine nor hu-  
man Laws hinder the King from pardoning Murder; and  
it may often happen, that (upon due Consideration of the  
Person, Times and other Circumstances) a Pardon may  
be as effectual to attain the good Ends intended by a Pu-  
nishment, as any rigorous Execution of it might have  
been; and in such Cases the King is the supreme Judge.

## Parliament.

Levyng Wa-  
ges for Mem-  
bers of Parlia-  
ment.

**T**HE Levyng of the Expences of Members coming to Parliament, viz. the Knights 4*s.* and the Burgesſes 2*s.* a Day, hath been from old Time; for I find ſo long ago as 12 R. 2. c. 12. an Act, that the Levyng the Expences of Knights coming to Parliament ſhould be made as in Times paſt.

To be aſſeſſed  
by the Sheriff.

By Stat. 23 H. 6. c. 11. the Sheriff in the next County Court, after he hath received the Writ, ſhall make Proclamation, &c. and then in full County ſhall aſſeſs every Hundred by it ſelf, and every Town in each Hundred by it ſelf; and the Sheriff or other Officer who levies more than is ſo aſſeſſed, ſhall forfeit 20*l.* to the King, and 10*l.* to the Proſecutor.

Juſtices of both Benches, Juſtices of Aſſiſe, Gaol-Delivery and of the Peace, have Power to hear and determine theſe Abuses, as well at the Suit of the King as for the Party.

In Wales by  
two Juſtices.

By Stat. 35 H. 8. c. 11. two Juſtices in each of the twelve Counties in *Wales* and in *Monmouthſhire*, may tax every City and Borough therein towards the Wages of the Members of Parliament, &c.

Two Juſtices  
may adminiſter  
the Oath to  
Candidates.

By Stat. 9 Ann. c. 5. the Oath appointed to be taken by Candidates may be adminiſtered by the Sheriff or Under-Sheriff, or other Officer to whom it belongs to take the Poll or make the Return, or by any two Juſtices of the Peace, who are to certify the ſame into the Chancery or B. R. within three Months afterwards, under the Penalty of One Hundred Pounds; one Moiety to the King, and the other to the Informer, for which no Fee ſhall be taken but 1*s.* for the Oath, 2*s.* for the Certificate, and 2*s.* for filing it, under the Penalty of 20*l.*

Every Candidate ſhall, at the reaſonable Request of any other Candidate, at the Time of the Election, or of two or more Perſons who have a Right to vote, take the following Oath.

### The Candidate's Oath.

**I** A. B. do ſwear, that I truly and bona fide have ſuch an Eſtate in Law or Equity to and for my own Uſe and Benefit, of or in Lands, Tenements or Hereditaments (over and above what will ſatisfy and clear all Incumbrances



ees that may affect the same) of the annual Value of Six Hundred Pounds above Reprizes, as doth qualify me to be elected and returned to serve as a Member for the County of \_\_\_\_\_, according to the known and true Meaning of the Act of Parliament in that Behalf; and that my said Lands, Tenements, or Hereditaments are lying or being within the Parish, Township or Precincts of \_\_\_\_\_, in the said County of \_\_\_\_\_, or, in the several Parishes, Townships, or Precincts of \_\_\_\_\_, in the County of \_\_\_\_\_, as the Case may be.

These must be either Freehold or Copyhold Lands, and the Person must be intitled to them for Life, or a greater Estate; and every Citizen and Burgeſs is to have 300*l.* per Ann. or his Election shall be void.

Must be a Freehold or Copyhold Estate.

This Act doth not extend to the eldest Son of a Peer, or of a Person qualified to serve as a Knight of a Shire, to make him incapable, &c. nor to the Universities.

Act does not extend to a Peer's eldest Son, &c.

A Mortgagee shall not be capable, unless he hath been in Possession seven Years before the Election.

By the Statute 10 Ann. c. 23. every Freeholder before he is admitted to poll, shall, if required by the Candidates, take this Oath.

### Freeholder's Oath.

**Y**OU do swear, that you are a Freeholder in the County of \_\_\_\_\_, and have Freehold Lands or Hereditaments, lying or being at \_\_\_\_\_, in the said County, of the yearly Value of 40*s.* above all Charges payable out of the same; and that such Freehold Estate hath not been made or granted to you fraudulently, on Purpose to qualify you to give your Vote, and that the Place of your Abode is at \_\_\_\_\_, in the said County, and that you have not been polled before at this Election.

This Oath is to be administered by the Sheriff, Under-Sheriff or sworn Clerk by him appointed to take the Poll; and the Returning Officer shall, within twenty Days after the Election, deliver over to the Clerk of the Peace all the Poll-Books on Oath, made before the two next Justices of Peace, *Quorum unus*, &c.

By Stat. 1 Geo. 1. c. 56. no Person having any Pension from the Crown, shall be capable of being elected a Member of Parliament, or of sitting or voting as such. In Case any such Person shall presume to sit or vote in that House, he forfeits 20*l.* for every Day he shall sit

None having Pensions can be chosen, or sit as a Member.

and vote there, to him who will sue for the same in any of the Courts at *Westminster*, by Action of Debt, with full Costs of Suit.

Oath to be taken by Electors, &c.

The Stat. 2 *Geo.* 2. requires an Oath to be taken by Electors, that they have not received, or had any Money, Reward, Gift, Place or Promise for their Votes, &c. and if they take any Bribe, renders them incapable of voting in any Election, or to hold any Office or Franchise, and inflicts a Penalty of 500*l.* This Act to be read once a Year at the Quarter-Sessions, by Order of the Justices there.

And a Justice of Peace, or in his Absence, three Electors may administer the Oath (required by this Statute) to Returning Officers, that they have received no Money, Reward, Gift, &c. to make any Return.

## Partition of Lands.

Two Justices must attend Under Sheriff in making Partition.

**B**Y Statute 8 & 9 *W.* 3. c. 31. two Justices must be present at their Under-Sheriff's Executing a Writ of Partition, when the High-Sheriff, by Reason of Distance, Infirmary, or any other Hindrance, cannot be there present; and such Partition being made, returned and filed, shall stand good.

In case the High-Sheriff cannot be present at Partition, &c. all Justices of the Division must attend or shew Cause, on Oath, for being absent, to be allow'd by Court of, &c. or may be liable to pay Costs, &c. to Demandant, not above 5*l.*

This Act at first was temporary, but by Stat. 3 & 4 *Ann.* c. 18. it was made perpetual.

**Partridge.** See Game.

**Party-Walls.** See Fire.

**Peace.**

**Peace.** See **Good Behaviour.**

**E**VERY private Person, that shall be present at any Affray, Assault or Battery, ought to part them that fight, and may stay them 'till their Heat be cooled; but they may not imprison them, unless the one of them be in Peril of Death by some Hurt, for then any Man may carry the other to the Gaol, 'till it be known whether the other will live or die. *Lamb. 131. Dalt 33.*

If any Affray, Forcible Entry, or any Thing in Disturbance of the Peace, be done in the Presence of a Justice of Peace, he may record it, and certify the same, and commit the Parties presently. *Dalt. 144.* Justice may record an Affray done in his Presence.

If the Justice of Peace certify into *K. B.* that *A. B.* hath broken the Peace, upon that Certificate, *A. B.* shall be there fined, without allowing him any Traverse. *Dalt. 144. 2 Cro. 132.* Offender fin'd in B. R. on Justice's Certificate.

All Affrays, Assaults, injurious and violent Handlings and Battery, Strikings, Imprisonment without Warrant, thrusting one into the Water, &c. are Breaches of the Peace; and for these, and such as these, a Man may be bound to keep the Peace, and be indicted and fined. What are Breaches of the Peace.

Surety of the Peace is the Acknowledging of a Recognizance to the King, taken by a competent Judge of Record for the keeping of the Peace.

A Justice of Peace may, of his own Authority, Motion and Discretion, bind a Man to the Peace, and that against all the King's Subjects, if he thinks fit. 1. Where an Assault is made on the Justice himself. 2. Where a Justice may bind to the Peace. &c.  
When an Assault is made upon another in his Presence. 3. If one in his Presence threaten another, &c. 4. For Contention in hot Words in his Presence. 5. If one not authorised go armed offensively, or with an unusual Number of Servants, &c. or Servants or Labourers bearing Weapons, against the Stat. of 12 Ric. 2. 6. he may bind any Person by him suspected to be endeavouring to break the Peace. 7. A Person brought before him by a Constable, who had made an Affray, &c. in his Presence. 8. A Person, who goes about to break the Peace in the Constable's Presence, or assaults him, may be carried by the Constable before the Justice who may bind, &c. 9. He may at his Discretion convene before him a Person who had broke the Peace (though not in his Presence) and command Sureties of him. 10. He may upon his Discretion bind to the Peace a common Barretor. 11. So of Rioters. 12. If one bound break



the Peace, the Justice ought to bind him anew; but it seems not 'till after Conviction upon the first Recognisance. 13. Any Justice may for the Insufficiencies of the Sureties, compel one bound to the Peace to find better. *Dalt. c. 70.*

One fearing that another will burn his House, may demand the Peace against him, but not he that is threatned to be imprisoned, or to have his Goods burnt.

It seems likewise the Peace shall not be granted for the Master's Fear, that another will hurt his Servant, &c. or for that he is at Suit or Variance with his Neighbour. *Lamb. 85.*

The Peace must be granted upon Oath made, &c.

When the Peace is granted, upon Request, there must be an Oath made by the Party desiring it, That he stands in Fear of his Life, or some bodily Hurt, or the Firing of his House by him against whom he desires it, or by his Procurement; and that he desires the Peace against him, not out of Malice or Hatred, but out of very Fear from his threatening to do it, or procuring it to be done, or otherwise.

And it is held, that the Justice may not bind to the Good Behaviour, nor commit to Prison, for Refusal to give Surety upon a general Accusation, without some Particulars. *Pasch. 23 Car. 2. B. R.*

If he which is bound to the Peace break his Recognisance, he may be indicted for it, for it is a new Offence. *Style 369.*

Two bound for challenging one another.

A Person said to be a Member of the House of Commons, bound in a Recognisance of 500*l.* to keep the Peace, for challenging one of the Queen's Witnesses in an Indictment for Treason; and because the Witness had accepted the Challenge, he was bound in the same Sum. *2 Vent. 317.*

Warrant ought to express what Sum is required.

The Warrant of a Commitment for not finding Sureties for the Peace, ought to express in what Sum the Person is required to find Sureties; otherwise it may be so excessive, that any Person may be constrained to remain in Prison. *2 Vent. 22. 2 Leon. 184.*

A Warrant

# A Warrant to find Sureties for the Peace.

Effex, ff. **F**Orasmuch as A. B. of C. hath this Day taken his corporal Oath before me, that C. D. of, &c. and hath therewithal prayed Surety;

That he is afraid that A. B. of C. will beat, wound, maim, kill him, or burn his House;

That A. B. of C. hath already assaulted, beaten and bruised him; and further hath threatened him in such Sort, that he is afraid that the said A. B. will beat, wound, maim, kill, or do him some other bodily Harm;

That A. B. hath already threatened that he will beat, wound, maim, kill, or do him some other bodily Harm, or burn his House; and that he is afraid he will accordingly do so.

Where a Warrant is against two for the Peace, say,

*As we for their respective personal Appearance, &c.*

*And they will respectively in the mean Time, &c.*

*And if they, or either of these, A. B. and C. D. shall refuse so, &c.*

*Convey them or him so refusing to the Gaol aforesaid, &c.*

*And them or him so conveyed there to deliver, &c.*

*To receive them or him so delivered into the said Gaol, and them or him so delivered there safely, &c.*

*Until they or he so delivered shall find, &c.*

*of the Peace against the said C. D. These are therefore, in his Majesty's Name, to command you the said Constable, that you do cause the said C. D. to come before me, or some other of his Majesty's Justices of the Peace for the said County, to find sufficient Security, as well for his personal Appearance at the next General Sessions of the Peace to be holden for the same County at T. aforesaid, then and there to do and receive as by the said Court shall be enjoined; as that he will in the mean Time, keep his Majesty's Peace towards his said Majesty, and all his Liege People, and especially towards the said A. B. and if the said C. D. shall refuse so to do, that then (without expecting any further or other Warrant) you do safely convey him to the Gaol aforesaid, and him there deliver to the said Keeper of the same, together with this Precept; commanding also you the said Keeper to receive him into the said Gaol, and him there safely to keep, until he shall find such sufficient Security aforesaid. Hereof fail not at your Peril. Given under my Hand and Seal, at, &c.*

34 Edw. 3. c. 1.

One Justice by the first Assize of the Commission of the Peace.

Any of these Causes are sufficient.

Lamb. 9.

3 Edw. 1. c. 9.

W. 1.

1 Ric. 2. c. 4.

4 Hen. 4. c. 1.

2 H. 4. c. 1.

7 H. 4. c. 1.

If a Man be to find Surety of the Peace or Good Behaviour, the Justice must shew the Matter in the Warrant, but need not, if it touch Treason, Felony or capital Offences, or Conspiracy, or unlawful Assemblies. *Dalt.* 440. *Crompt.* 148. *l.* 16.

### A Mittimus for breaking the Peace.

*Essex, ff.* **I** Send you herewithal the Body of A. B. whom I charge and require you, in his Majesty's Name, to take into your safe Custody (for divers Misdemeanors committed by him against his said Majesty's Peace) until he shall procure two good and sufficient Sureties to be bound with him in a Recognisance to his said Majesty, either of them in the Sum of Ten Pounds, and himself in Twenty Pounds, to appear before his said Majesty's Justices of the Peace, at the next Sessions of the Peace to be holden for this County; and in the mean Time to be of Good Behaviour towards his said Majesty and all his Liege People. Whereof fail not, &c. Given under, &c.

### Peers.

None Noble under the Degree of Baron.

Justice cannot grant a Warrant for the Peace against a Nobleman by Birth or Creation.

In what Cases Noblemen are to have Clergy.

**I**N the Law of England none are counted Noble under the Degree of a Baron.

A Nobleman's Promise on his Honour, to keep the Peace hath been held sufficient. *Dalt.* 267. *Lamb.* 81, 82. and therefore a Justice of Peace ought not to grant a Warrant of the Peace against a Lord of Parliament; nor can they be arrested by *Capias*, 26 *H.* 8. c. 8. Nor against a Dutcheſs, Marchioneſs, Counteſs, Viſcounteſs or Baroneſs; for they have the ſame Privileges that Dukes, &c. have, and ſhall be tried by their Peers. *Dalt.* 267.

But this muſt be underſtood of thoſe who are Noble by Creation or Birth; for if they are only Noble by Marriage, and the Husband dieth, and then they marry Gentlemen, they loſe their Dignity. 1 *Cro.* 110. *Dalt.* 267. 6 *Co.* 52, 53.

A Nobleman by Stat. 1 *Edw.* 6. c. 12. in all Caſes of Felony (wilful Murder and Poiſoning, of Malice pre-

penie



penfe excepted) ſhall, upon his Requeſt and Prayer, al-  
 ledging that he is a Lord or Peer of the Realm, without  
 Burning in the Hand, Loſs of Inheritance, or Corrup-  
 tion of Blood, be adjudged for the firſt Time only as a  
 Clerk convict: But in all other Caſes, wherein Clergy  
 is taken away by any Statute ſince 1 *Edw.* 6. c. 12. he  
 is in the ſame Degree as a common Perſon.

Where either a Peer or a Lord Spiritual is Party (tho' Knight to be  
 with others) a Knight muſt be returned of the Jury. of the Jury,  
 1 *Inſt.* 156. unleſs in cri-  
 minal Caſes,  
 and then a  
 Peer muſt be  
 tried by his  
 Peers.

This is in Civil Cauſes, or in Caſes of *Præmunire* and  
 Appeals; for in criminal Caſes, upon Indictments at the  
 Suit of the King, though it be for the Murder of a pri-  
 vate Perſon, yet a Peer ſhall be tried by his Peers.

But then he muſt be a Peer *ratione Nobilitatis*, and not  
 by Reason of the Barony which he holds in Right of the  
 Church; for Biſhops have not this Privilege, nor the  
 Sons of Noblemen, if ſuch Sons are not Lord's of Par-  
 liament.

The Indictment may be either before Commissioners of The Manner of  
 Oyer and Terminer in the County where the Offence was it, &c.  
 committed, or in *B. R.* if done in *Middleſex*.

After it is found, the King appoints a Lord High Stew-  
 ard of *England*, by a Commiſſion under the Great Seal,  
*pro hac vice*; but yet ſuch Commiſſion may be adjourned.

In this the Indictment is recited, and Power given to  
 the Lord High Steward to proceed thereon, *ſecundum Le-  
 gem & Conſuetudinem Angliæ*; and all the Peers are com-  
 manded to attend him, and the Lieutenant of the Tower  
 to bring up his Priſoner. This is the Subſtance of the  
 Commiſſion.

Then two Writs are iſſued out of Chancery, *viz.* a  
*Certiorari* to remove the Indictment returnable *indilate*,  
 and a Writ directed to the Lieutenant of the Tower to  
 bring up the Priſoner.

There are two Precepts likewise made by the ſaid High  
 Steward under his Seal; the one directed to the Com-  
 miſſioners of Oyer and Terminer to certify the Indict-  
 ment; the other to the Lieutenant of the Tower, ap-  
 pointing him the Place and Time when and where he  
 ſhall bring up the Priſoner. And he ſends another Pre-  
 cept to the Serjeant at Arms to ſummon the Peers to ap-  
 pear; which being done, and the Court being ſate, the  
 Clerk of the Crown and the Uſher deliver the Commiſ-  
 ſion and the White Rod to the Lord High Steward, and  
 both are by him re-delivered to them reſpectively, the  
 Uſher keeping and holding the Rod all the Time of the  
 Trial.

Then

Then the three following Proclamations are made by the Serjeant at Arms.

1. To all Justices and Commissioners to certify Indictments and Records.
2. That the Lieutenant of the Tower return his Writ and Precept; and that he bring the Prisoner to the Bar.
3. That the Serjeant at Arms return his Precept, with the Names of the Peers by him summoned.

The Return of these Writs and Precepts are read by the Clerk of the Crown, and another Proclamation is made, that the Peers answer to their Names; but they are not to be sworn.

If the Prisoner pleads Not Guilty, he cannot have Counsel to speak to a Matter of Fact, because that ought to be plainly proved to the Satisfaction of the Court, to induce them to think him Guilty: But if any Matter of Law arise, as where a Pardon is pleaded, &c. then he is allowed Counsel to argue that Matter; and if the Peers have any Doubt, it ought to be resolved in open Court, in the Presence and Hearing of the Prisoner; and to that End all the Judges attend the Trial.

The Prisoner is either acquitted or convicted by the Majority of the Peers, each of them saying, Guilty, or Not Guilty upon his *Honour, seriatim*, beginning with the lowest, and ending with the highest Peer.

If a Woman who is Noble by Birth marrieth a private Gentleman, she doth not lose her Name of Dignity; but if she acquire her Nobility by Marriage, and being a Widow marry a private Gentleman, in such Case she retains her Dignity only by Curtesy.

How a Woman loses her Nobility.

Perjury.

## Perjury.

**P**erjury is where a lawful Oath is administered by any Person that hath Authority, to a Person, in Judicial Proceedings, and he sweareth falsely in a Matter material to the Issue or Cause in Question, either of his own Accord, or by the Subornation of others. What Perjury is.

And a false Oath in any Court of Record, or in any Judicial Proceeding, is Perjury at Common Law. At Common Law.

374. *Roll's Abridgment*, 2 Part 257. *Sid.* 274. and is punishable now either at Common Law, or by Statute, by Fine and Imprisonment. 2 *Cro.* 8. 5 *Eliz.* c. 9. *Siderfin* 454. *Raym.* 34.

To make it Perjury at Common Law, it must be wilful and deliberate, and what is affirmed must be false, and it must be absolute and direct, and not as the Witness believes or remembers. It must likewise be in some Judicial Proceeding, either in a Court of Law or Equity, or before Persons in the Country, having Authority to administer an Oath, or by making an Affidavit where the Fact is either falsely affirmed or denied.

It must be in a Matter material to the Issue; for if 'tis in a Thing immaterial, and not tending to the Cause, 'tis not Perjury. *Dalt.* 212.

Subornation of Perjury is likewise an Offence at Common Law; and this is by procuring another to take a false Oath. The Punishment for Perjury and Subornation, is Fine, Imprisonment and Pillory, and the Offender is for ever after disabled to be a Witness. What is Subornation of Perjury.

Perjury is also punishable by Stat. 5 *El.* c. 9. by which it is enacted, That Suborners of false Witnesses forfeit 40*l.* to the King and Prosecutor, or six Months Imprisonment, and to stand in the Pillory an Hour, and not be received as an Evidence till Judgment be reversed. *Note*; On every such Reversal, the Party grieved to recover Damages against such Person as did procure the said Judgment reversed to be first given against them, or any of them, &c. Persons by Subornation, or by their own Act, being guilty of wilful Perjury, shall forfeit 20*l.* and six Months Imprisonment, &c. as before: Offender not having Goods, &c. to that Value, to be set in the Pillory, and his Ears nailed, &c. See the Act. Forfeitures to go to the King and Person grieved, and the Justices at Quarter-Sessions may hear and determine Perjury by Statute.



termine these Offences. 5 Eliz. c. 9. & 14 Eliz. c. 11.  
1 Jac. c. 25. 1 Cro. 18.

Statute extends  
only to Perjury  
in a Witness.

But this Statute extends only to Perjury by a Witness, and not Perjury in an Answer to a Bill in a Court of Equity, or to Perjury in an Affidavit; neither is a false Oath within this Statute, if it is not prejudicial to some Party in the Cause; nor does it extend to Offenders of this Nature in the Ecclesiastical Courts, if the Matter is Spiritual and not Temporal.

Punishment of  
Perjury by Stat.  
2 G. 2.

But now by a Stat. made 2 G. 2. 'tis enacted, That besides the Punishment already inflicted by the Law, the Court, before whom any Person shall be convicted of wilful and corrupt Perjury, or Subornation, shall order him to be sent to some House of Correction for a Time, not exceeding seven Years, there to be kept to hard Labour during all the Time, or otherwise to be Transported for seven Years, as the Court shall think most proper; and if Transportation be directed, the same shall be executed as is provided by Law for Transportation of Felons: And if any Person so committed or transported, shall voluntarily escape, or break Prison, or return from Transportation before his Time is expired, he shall suffer Death as a Felon, and shall be tried in the County where he so escaped, or where he shall be apprehended.

This Act not to extend to Scotland.

No Attainder of Felony by this Act shall work any Corruption of Blood, Loss of Dower, or Disinheritance of Heirs.

This Act to be in Force for five Years from the 29th of June, 1729, and from thence to the End of the next Session of Parliament.

The best Way  
of Prosecution  
is by Indict-  
ment at Com-  
mon Law.

The safest Way in a Prosecution for Perjury is by Indictment at Common Law, because so much Certainty is not required in that Prosecution, as is upon the Statute.

One Justice may bind the Offender over to the Sessions.

There may be Perjury in an Answer in Chancery, tho' not in a Matter charged in the Bill, but then the Indictment must be laid at Common Law, because 'tis not material to the Issue; as it must be likewise for a false Affidavit taken before a Master in Chancery, or for a false Answer; for these cannot be punished by the Statute; because the Statute extends only to Witnesses in Causes between the Parties. Cro. Car. 353.

2 Bulst. 322.

If any thing false be inserted in a Deposition, 'tis False Deposition no Perjury, upon the Statute, *Cro. Car.* 353. unless it be contrary in a Matter particularly charged in the Interrogatories, because the Commissioners who administer the Oath have Power in any thing not charged in the Interrogatories. *Sid.* 274.

If a Man call another perjur'd Man, he may bring his Action on the Case; but an Action will not lie for calling another forsworn Man. *23 H.* 8. Where Action lies for Words.

If a Man swear in common Discourse, that he has a Property in a Thing when he really has not; or a Constable who is sworn to execute his Office truly, and doth not; these and such like Oaths are called Extrajudicial, and not punishable as Perjury. Swearing in common Discourse Extra-judicial.

If an Officer sworn take other Fees, than are allowed and incident to his Office, he committeth Perjury. *Cro.* 57.

A Man is convicted of Perjury at Common Law, the King may pardon and restore him; *aliter*, if he is convicted on 5 *Eliz. c.* 9. for that says expressly he shall not be a Witness till the Judgment of Conviction be reversed. Conviction at Common Law may be Pardoned, but not by Statute.

A Man may be indicted of Perjury for making a false Affidavit, by the Common Law, tho' not upon Stat. 5 *Eliz. c.* 9. *Mich.* 12 *Ja.* 1. 1 *Roll's* 79. *Mich.* 20 *Ja.* 1. 2 *Roll's* 244.

*M.* was indicted on 5 *Eliz. c.* 9. for Perjury before a Commission for examining Witnesses in Chancery, and the Indictment was quash'd in *B. R.* 1. Because it was not set forth, that the Commission was under the Great Seal, so that it might appear that the Commissioners had Power to take an Oath. 2. Because the Indictment recited the said Statute, and shews in what Particular the Oath was false, but did not shew what the Issue in Chancery was, so that it might appear, whether what was sworn was material to the Issue. *Hill.* 21 *Ja.* 1. 2 *Roll's Rep.* 427. *Cr. Eliz.* 148. *Lacre's Case.* Cases of Perjury.

Perjury in a Witness is punishable by the Common Law. 12 *Co.* 101. *Hugh Manneg's Case.* 3 *Inst.* 164. *Mich.* 6 *Ja.* 1. 2 *Cro. p.* 212.

Indictment on Stat. 5 *El. c.* 9. must set forth the Judicial Proceedings, and the Oath taken to be material in something to the Issue between the Parties, else nought. *Cr. Car.* 152. 3 *Inst.* 165. 2 *Bulst.* 322. 1 *Roll. Rep.* 79. 2 *Lev.* 292. *Yelv.* 120. *Noy* 80. *Latch* 38, 132. 4 *Lev.* 105. *Godb.* 171, 179.

*L. F.* was indicted upon 5 *Eliz. c.* 9. for Perjury, in giving false Evidence to the Grand Inquest at *Wisbich Sessions.*

Cases of Per-  
jury.

Sessions, upon an Indictment for a Riot. The Indictment of *L. F.* was removed into *B. R.* and *L. F.* was discharged of that Indictment: For that Stat. has two Branches, first against Suborners or Procurers of Perjury, and that is in Matters depending by Bill, Writ, Action or Information; so that *L. F.* was out of this Clause. And the second Branch (and upon which *L. F.* was indicted) provides against them who commit Perjury by his or their Deposition in any of the Courts above-mentioned, or in being examined in *perpetuam rei memoriam*. And tho' this Clause be general, and not restrained by any Words to such particular Suits by Bill, &c. as the first was; yet in good Construction this Branch shall have Reference to the first, and shall be expounded by it; for one Part of the Act expounds the other. 5 Co. 99. *Flower's Case*. 40 & 41 Eliz. Pasch. 30 Eliz. 3 Leon. 201. *Matthews's Case*.

*R.* was indicted for Perjury upon 5 Eliz. c. 9. supposed to be committed in his Answer in the Star-Chamber, and his Examination upon Interrogatories there; but because he was not examined as a Witness, nor in *perpetuam rei memoriam*, he was discharged. Mich. 31 & 32 Eliz. Cro. Eliz. 448. *Riiber's Case*. Hil. 5 Ja. 1. Yelv. 120. *Sir Robert Miller's Case*.

A Man took an Oath in the Court of Requests in a Business there depending concerning Matter of Freehold, and was prosecuted for Perjury; and the Question was, Whether he was perjured or not; the Court of Requests having no Jurisdiction in Matters which concern Freehold. Resolved by all the Judges of England, that tho' the Matter sworn was in Fact false, yet it relating to a Matter of Freehold, whereof the Court of Requests had no Jurisdiction, it was not Perjury, and he was acquitted. Hill. 8. Ja. 1. 1 Bulst. 107, 108. Yelv. 3.

*A.* was prosecuted for Perjury in making a false Affidavit before *Sir Robert Rich*, who was one of the Masters in Chancery; and ruled to be no Perjury, being upon an Affidavit, and not sworn in Court. Latch 38 & 132. *Luthers vers. Holland*.

An Indictment at *Kingston upon Thames*, upon the Stat. for Perjury, was quashed for two Causes. 1. It is not express'd in what County *Kingston* is. 2. It doth not express how the Party was perjured; for it shews not in what Cause it was, nor that it was in giving any Evidence upon Oath as Witness in any Cause. Trin. 24 Car. 1. B. R. Style 116. Cro. Eliz. 137. *Stedman's Case*, and p. 148. *Fane's Case*. Cro. Eliz. 428.



An Indictment of Perjury at Sessions was quash'd, because it did not appear that any of the Justices, before whom it was taken, were of the *Quorum*. *Trin.* 24 *Car.*

1. *Style* 123, 124.

An Indictment upon Statute 5 *Eliz.* c. 9. against Perjury, was quash'd, because the Indictment set forth that the Oath was taken before Baron *Atkins* and Serjeant *Turner*; but it doth not say where the Oath was taken. *Trin.* 24 *Car.* 1. *B. R.* *Style* 126.

Cases of Perjury.

*D.* was indicted upon 5 *Eliz.* c. 9. for Perjury; and the Indictment was, that *tacto per se sacro Evangelio falso deposuit*; but it was not directly alledged that he was sworn. The Indictment was discharged; for the Justices said when such a heinous Crime was objected against one, it ought to be fully alledged, otherwise it is not good. *Cro. Eliz.* 105. *Dinslowe's Case*.

*L.* and *H.* were indicted upon the 5 *Eliz.* c. 9. for Perjury, and discharged, because the Indictment was *falso & corruptive*, but not *voluntarie*. *Cr. Eliz.* 147. *Lembro* and *Hamper's Case*, 201, 30.

The Defendant having made an Affidavit in *C. B.* and appearing in Court upon a Summons, confessed that he made it, and that it was false; whereupon the Court recorded his Confession, and ordered that he should be taken into Custody, and stand on the Pillory, &c.

It was objected that his Confession was not a Conviction, but only Evidence of his Guilt, and that he ought to be brought before the Court judicially, by Indictment, and convicted thereon: Besides, the Court of *C. B.* hath not Jurisdiction in this Case, it being criminal; but *per curiam*, the Confession of a Crime is the strongest Evidence against the Criminal himself; and the Statute 5 *Eliz.* c. 9. gives Power to hear and determine this Offence by Inquisition, &c. or otherwise, by which Word the Confession of the Party may be intended, and the Punishment by Pillory is inflicted by this Statute, which shews that the Court proceeded on the Statute; but it is likewise an Offence at Common Law. *Trin.* 9 *Geo.* *C. B.* *The King* versus *Thorogood*.

On an Information for Perjury, there was a Verdict for the King: The Information was *Memorandum*, that Sir *T. F. Knt.* giveth to the Court to understand, and to be informed, that in *Hillary Term* 1659, in *Rotulis continetur sic*, that *D.* brought an Action; and so recites the whole Record and Trial; and that the Defendant *falsum præstitit sacramentum*, at the said Trial, &c. It was objected in Arrest of Judgment, that to say in *Rotulis continetur*, that the Defendant took a false Oath, is not a

U u

positive

positive Charge; for it ought to be after Reciting the Proceedings, & *ulterius dat cur' hic intelligi*, that the Defendant took a false Oath; but adjudged that the Record itself being a Record of the Court, the Judges will take Notice and consider what is positive in it.

Information for Perjury, setting forth that the Defendant swore that Mr. *Stroud* about the Middle of July 1681, was at *Newnham*, (a) *innuendo Newnham in Devonshire*, when in Truth he was not; there was a Verdict for the King; but the Judgment was set aside, because the Word *Newnham*, without mentioning any County, is very uncertain, and might be as well in one Place and County as in another; and it is not restrained by a bare *Innuendo* to *Devonshire*, not being done by Way of Averment; so it may serve to explain a Thing antecedent, but never to add new Matter: And if so, then this is constructive Perjury, which the Law will not allow. It is true, this is an Information upon the Statute, but yet it ought to be as certain as on an Indictment. The Difference is that where the Conviction is on the Statute, Disability is Part of the Judgment; but if at Common Law, then Disability is the Consequence of the Conviction; therefore in the last Case, a Pardon restores him to be a Witness, but not in the other; for there he must reverse the Judgment.

Where Perjury  
in Spiritual  
Court, &c.  
is punishable.

Perjury in the Spiritual Court, or in a Court-Baron, is punishable at Common Law; but where the Indictment is upon the Statute, it must appear to be committed in a Court of Record; as if the Defendant is indicted for procuring a Witness to take a false Oath before the Town-Clerk of *London*; this is not within the Statute; for it is *coram non iudice*; and the Subornation must be to give Evidence in a Court of Record.

If an Indictment be grounded upon the Common Law, there needs not so great a Certainty in it, as if brought on the Statute. *Sid. 106.*

What the In-  
dictment must  
set forth.

My Lord *Coke* in his 3d *Institute* 163, in his Paraphrase on this Statute, tells us that the Indictment must set forth the judicial Proceeding: It must also shew that the Oath was taken in something material to the Issue, because the Statute gives the Remedy to the Party grieved; and if the Deposition is not in a Thing which is conducing to the Issue, the Party is not grieved. *Cro. 152. 3 Inst. 165.*

Where Indict-  
ments good at  
Common Law.

Making a false Affidavit, may be punished as aforesaid, by an Indictment at Common Law; and in such Case the Affidavit must be filed; and after the Perjury is assigned, you must conclude *prout patet per Recordum.* *Styl.*

*Styl.* 336. 2 *Bulst.* 322. 1 *Roll. Rep.* 79. 3 *Leon.* 201.  
*Yelv.* 120. *Noy* 80. *Latch* 38, 132.

But if it appears that the Oath was made in some- Where upon  
 thing conducing to the Issue, setting forth that the Ma- the Statute.  
 ster had Power to administer an Oath; the Indictment  
 may be good upon the Statute. 4 *Leon.* 105. *Godb.* 71,  
 179.

If an Indictment is at Common Law, supposing the  
 Perjury to be committed in a Deposition to Interrogatories  
 in Chancery, you need not set forth to what Interrogatory;  
 but if it is upon the Statute, then you must shew that  
 the Commission was under the Great Seal of *Great Bri-*  
*tain*, that it may appear to the Court, the Commissioners  
 had Authority to administer the Oath; and you must as-  
 sign the Perjury to be in a Point conducing to the Issue in  
 Chancery, and shew how it concerned the same.

So also if it be upon the Statute, it must appear to be It must be wil-  
 wilful Perjury; for if it is that the Defendant *falso &* ful Perjury.  
*deceptive deposuit*, it is not good, though the Indictment  
 concludes, *& sic commisit voluntarium Perjurium*, because  
 the one is no positive Allegation, that he did it wilfully,  
 and the other is but a wrong Conclusion from the Pre-  
 misses.

A Man is punishable on the Statute for a false Oath be-  
 fore a Steward of a Leet. *Styl.* 324. 29 *Car.* 2. c. 5.  
*Sid.* 106. 2 *Roll. Rep.* 427. *Cro. Eliz.* 428. 2 *Leon.* 211.  
*Cro. Eliz.* 147, 201. *Het.* 12.

If a Man wage his Law, he is a Witness for himself,  
 but not punishable by the Statute. *Noy* 128. If a Man  
 swears the Truth, and does not know it, he is Guilty of  
 Perjury. *Het.* 97.

To say only *tacto per se sacrosancto Evangelio deposuit*, is  
 ill, because no positive Allegation that he was sworn. *Cro.*  
*Eliz.* 104.

If in reciting the Action you should mistake the Term  
 in which it was brought, this is only circumstantial; and  
 if it appear to be between the same Parties, and in the  
 same Cause, it is good; for the Defendant cannot be  
 doubly charged in such Case. *Godb.* 88.

The Defendant was found Guilty, for that he *movebat*, Indictment for  
*persuadebat & subornavit* J. C. to swear that several Subornation,  
 Men were at such a certain Place, who really were at must set forth  
 that Time in another Place; but upon a Writ of Error what the Per-  
 the Judgment was reversed, because the Indictment did jury was.  
 not set forth that any Oath was made; for it is not  
 enough for one to say that the Defendant suborn'd another  
 to commit Perjury, but he ought to shew what Perjury it



is ; which cannot be done unless an Oath was made.  
3 *Mod.* 122.

If Prosecutor  
will not, De-  
fendant may  
try it by Pro-  
viso.

If issue be joined upon any of these Indictments, and the Prosecutor will not try it, the Defendant may bring it on by Proviso, though it is in the Case of the King, because it is for the Benefit of the Subject not to lie under such an Imputation.

No Certiorari,  
nor no new  
Trial to be  
granted.

And because the Fact shall be tried, the Courts above do not grant *Certiorari's* to remove these Indictments, or quash them upon Motions before Trial.

Neither after Trial do they grant a new One, though there is apparent Cause ; but this is only in Case the Defendant be acquitted ; for where he is found Guilty, it is otherwise. *Sid.* 49. 1 *Lev.* 9.

Convicted on  
Statute, must  
bring a Writ  
of Error be-  
fore he can be  
restored to his  
Credit.

J. was convicted of Perjury upon the Evidence of R. and afterwards J. convicted R. of Perjury, in the very same Matter ; but before J. can be restored to his Credit, he must bring a Writ of Error to reverse the Judgment upon the first Perjury. *Sid.* 217.

Cases of Per-  
jury.

B. a Midwife, was indicted for Perjury. The Case was thus :

One D. Tenant for Life, Remainder in Tail to his Son ; and for Want of such Issue to his Daughter, &c. died : His Widow soon after his Death declared that she was delivered of a Daughter ; and upon a Trial in Ejectment between the Infant and him in Remainder, it was proved that she was delivered by Circumstances usual in such Cases. But the Midwife deposed that this was the Child of a poor Woman, which she bought of the Mother for Half-a-Crown ; and that she conveyed it into the Bed to Mrs. *Dormer*, who cried out, and then the Midwife took the Child from her ; and that there was a Bladder of Blood, and some other Things provided by her, to resemble the After-Birth. The Jury gave Credit to the Midwife, and acquitted her of the Perjury. *Sid.* 377.

B. was Defendant in a Suit in Chancery, and made Affidavit that C. was so ill that he could not travel ; but at the Hearing of the Cause C. appeared and said he had not been sick, but that B. had desired him to feign himself sick in Bed, only that he might depose he left him so. The Lord Keeper *Egerton* ordered both Parties to attend, and to be examined on Interrogatories, and B. denied the Practice ; but C. affirmed it, produced Witnesses who very plainly proved it. Now this being double Perjury in B. first in making a false Affidavit, and then afterwards denying the Practice on Interrogatories, he was  
fin'd

fin'd 20*l.* to the King, and committed. And this is the rather mentioned, because there have been some Doubts whether Chancery could punish Perjury.

*Price* was indicted upon the Statute, for that he being produced as a Witness for the King, upon a Trial in an Information, he did forswear himself, and shewed wherein; and it was held, that a Witness for the King cannot be punished by an Indictment, which is meerly at the Suit of the King; for he cannot punish his own Witness, but he may be prosecuted upon the Statute by an Information, because one Moiety of the Penalty goes to the Informer.

Witness for the King cannot be punished by Indictment, &c.

Sir *J. J.* obtained a Verdict against one *P.* who indicted the Witness for Perjury: And this coming to a Trial, Sir *J. J.* ordered his Servants to beat the Witnesses who were to prove the Perjury; which was done, so that they could not appear when the Trial came on; by Reason whereof the Defendants were acquitted. And because after an Acquittal in a criminal Case, a new Trial cannot be granted; therefore the Court directed an Information against Sir *J. J.* for this Offence, who was convicted upon it, and fin'd 1000*l.* and bound to his Good Behaviour for a Year. 1 *Leon.* 124. *Sid.* 153.

### Indictment for Perjury in a Deposition in Chancery.

Essex, *ff.* **T**HE Jurors, &c. do present, that R. G. of R. in the County aforesaid, Yeoman, on the Ninth Day of August, (in such a Year) at R. aforesaid, in the County aforesaid, before J. S. and P. M. Esqs; Commissioners by Virtue of a Writ of Commission of our said Sovereign Lord the King, before issued out of his Chancery at Westminster, in the County of Middlesex, and directed to the said J. S. and P. M. for the Examination of Witnesses, as well on the Part of J. L. of L. in the County aforesaid, Gent. Plaintiff, as on the Part of C. H. of B. in the said County, Esq; Defendant, in a certain Suit, Cause or Matter then depending in Dispute between them the said J. L. and C. H. in the said Court of Chancery, for the Title of a Messuage, with the Appurtenances in H. aforesaid, personally appointed, and then and there being a Witness produced for the said J. L. to testify and depose in the said Cause, on the Behalf of the said J. L. and sworn by the said Commissioners to declare the Truth upon Interrogatories to him then and there administered by the said Commissioners.

## Perjury.

*Commissioners on the Behalf of the said J. L. said and wilfully and corruptly deposed upon his Oath, and affirmed in these English Words following, (to wit) [To the Sixth Interrogatory he saith that the said Messuage was used, &c.] as by the said Deposition of the said R. G. amongst others certified and returned by the said Commissioners into the said Chancery, and there remaining of Record, doth plainly appear; whereas in Truth and in Fact the said Messuage was not occupied, &c. and so the said R. G. (such a Day and Year) at R. aforesaid, in the County aforesaid, wilfully and corruptly committed Wilful and Corrupt Perjury before the said J. S. and P. M. being Commissioners of our said Sovereign Lord the King as aforesaid, contrary to the Form of the Statute in such Case made and provided, &c.*

An Indictment upon the Statute of 29  
Car. 2. c. 5. for Perjury in an Affidavit  
before Commissioners extraordinary.

Essex, ss. **T**HE Jurors, &c. do present, that R. G. of R. in the County aforesaid, Gent. (such a Day and Year) came before T. S. Gent. then a Commissioner, by Virtue of a certain Act of Parliament lately made and provided in the Twenty-ninth Year of the Reign of our late Sovereign Lord Charles the Second, late King of England, intituled, An Act for taking Affidavits in the Country, to be made Use of in the Courts of King's Bench, Common Pleas and Exchequer, and then and there being sworn upon the Holy Evangelists, (he the said T. S. then having a sufficient Authority to administer such Oath to the said R. G. by Virtue of the said Act of Parliament) then and there upon his said Oath falsely and maliciously, wilfully and corruptly deposed, swore and affirmed in Writing of and concerning [here recite the Special Matter about which the Affidavit was made, and then recite the Affidavits in hæc verba] between R. W. Plaintiff, and P. E. Defendant, &c. as by the said Oath of the said R. G. remaining in Writing and affiled in the Court of our said Sovereign Lord the King, before the King himself, at Westminster, in the County of Middlesex, it doth and may more fully appear; whereas in Fact and in Truth, [here recite the Falshood of the Words which shew it to be Perjury] and so the said R. G. on the said Ninth Day of August, in the Eighth Year, &c. at R. aforesaid, in the County



County aforesaid, before the said T. S. Gent. then and now being a Commissioner by Virtue of the said Act of Parliament, then and there having a sufficient Authority to administer the said Oath to the said R. G. he the said R. G. falsely, maliciously, wilfully and corruptly committed wilful and corrupt Perjury, contrary to the Form of the Statute, &c.

## Petition.

**P**ersons soliciting, labouring, or procuring the Getting Hands or other Consent of above twenty to any Petition, Complaint, Remonstrance, Declaration, or Address to the King, or either or both Houses of Parliament, for Alteration in Church or State, unless by Consent of three or more Justices, or major Part of the Grand Jury, at the Assises or Sessions of that County or Division where the Matter arises; or if in *London*, by the Mayor, Aldermen, and Common Council; or repairing to the King, to deliver such Petition, &c. with above ten Persons in Number, shall forfeit a Sum not exceeding 100*l.* and suffer three Months Imprisonment, without Bail.

Soliciting to get above 20 Hands to a Petition to the King, &c. forfeits 100*l.*

It must be presented at the Assises or Sessions within six Months after the Offence, and proved by two or more credible Witnesses.

But any not exceeding ten in Number, may present any Grievance to a Member of Parliament after his Election, during the Parliament, or to the King; and both or either House of Parliament may address themselves to the King. 13 *Car. 2. c. 5.*

Any not above ten in Number, may present it.

By Stat. of 1 *W. & M. c. 2.* It is declared that it is the Right of the Subjects to petition the King; and all Commitments and Prosecutions for such petitioning are illegal.

Petty Treason. See Treason.

## Pewter.

19 H. 7. c. 6.

**J**ustices at Quarter-Sessions after *Michaelmas*, yearly, shall appoint Searchers of Pewter and Brass; and if Searchers find any not lawful Metal, may seise it for their own Use and the King's. 19 H. 7. c. 6. See the Act.

## Physicians.

1 M. c. 9.

**J**ustice or Justices to assist the President and other Persons authorised by the College of Physicians, to search Apothecaries Shops for bad Drugs; and for putting in Execution the several Acts of Parliament, which concern the said College. 1 M. c. 9.

The four Censors of Physicians College may enter all Apothecaries Shops, &c.

By Stat. 10 Geo. 1. c. 20. it is enacted, That the four Censors of the College of Physicians, calling to their Assistance the Wardens of the Apothecaries Company in *London*, or one of them, shall have full Power at seasonable Times in the Day-time, when they think Convenient, to enter into any Shop, House, &c. within the City of *London*, or seven Miles thereof, to search, view and examine, all Medicines, &c. And every Apothecary, or other Person resisting, or hindering such Search, shall forfeit to the President and College 10*l*.

If any Person be sued for any thing done in Pursuance of this Act, he may plead the General Issue, and give this Act and the Special Matter in Evidence.

The Acts 14 & 15 H. 8. c. 5. 32 H. 8. c. 40. and 1 M. c. 9. and also this Present Act shall be publick Acts, and allowed as such by all Judges, Justices, and other Persons whatsoever, without Special Pleading the same.

This Act was to continue in Force for three Years; and from thence to the End of the then next Session of Parliament, but was continued by an Act 13 Geo. 1. for three Years longer, and from thence to the then next Session of Parliament.

## Pilchards.

**B**Y Stat. 13 & 14 Car. 2. c. 18. Suspicious Persons 13 & 14 Car. flocking together about the Boats, Nets, and Cellars, belonging to the *Pilchard-Craft*, upon the Coast of *Cornwall* and *Devonshire*, being warned by the Company or Owners of the Boats and Cellars, to be gone; and refusing so to do, forfeits 5*s.* to the Poor, and to be set in the Stocks. Conviction by one Witness before one Justice.

## Pick-Pocket. See Felony.

**M**Y Lord *Hale* calls this Larceny from the Person, without putting him in Fear; for it is done *clam & secrete*, without his Knowledge. In this Case Clergy is taken away by Stat. 8 *Eliz.* c. 4. if the Thing stole be of the Value of 12*d.* or more; for if it be under that Value, it is still but Petit Larceny; and though the Statute took away the Benefit of Clergy, it did not alter the Offence.

Wherein picking a Pocket differs from Robbery.

Therefore to make this Crime capital, 1. It must be done *clam & secrete*. 2. The Thief must have the actual Possession of the Thing taken. 3. It must be without putting in Fear; and 4. It must be above the Value of 12*d.*

There is a Case in my Lord *Dyer*, where a Felon took away Money to the Value of Forty Shillings, or above, from the Person of another in the Highway; and yet, for that he did not put his Person in Fear by Assault and Violence, this was holden no Robbery; and the Offender was allowed his Clergy for the same Felony. *Dalt.* 492.

A Man cuts my Girdle privily, my Purse hanging thereto, and the Purse and Girdle fall to the Ground, but he did not take them up (for that he was espied.) This is no Felony; for that the Thief never had an actual Possession thereof severed from my Person. But if he had holden the Purse in his Hand, and then cut the Girdle, although it had fallen to the Ground, and that he took it up no more, then had it been Felony, if there had been above Twelve-pence in the Purse; for he

had



**Pick-Pocket. Pigeon-Houses, &c.**

had it once in his Possession. But these secret and private Takings from my Person are no Robbery; for he neither assaulted me, nor put me in any Fear. *Dyer* 224.

**Indictment for this Offence.**

*Essex, ss.* **T**HE Jurors, &c. do present that R. G. late of F. in the County aforesaid, Labourer, (such a Day and Year) at F. aforesaid, in the said County, then and there privately and secretly, and without the Knowledge of the said J. S. feloniously took, stole and carried away from the Person of the said J. S. Six Shillings of current Coin of this Kingdom, of the Goods and Chattels of the said J. S. then and there being, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

**Pigeon-houses. See Game.**

To build a Dove-cote no Nufancec.

**I**T is not a common Nufance to build a Pigeon-house, if there be no Pigeons in it, and the Person who builds it is a Freeholder; and therefore not punishable in the Leet; for it cannot be a common Nufance, unless it is so to all Persons; but this can be only a Nufance to those whose Corn they eat. *2 Cro.* 204, 492. *Poph.* 141. *Mich.* 14 *Jac.* 1. *B. R.* *Vesey's Case.* But the contrary was adjudged in *B. R.* 16 *Jac.* 1. in the Earl of Northumberland's Case, reported in *Poph.* 141. *Cro. Jac.* 490. *Pl.* 11. *Roll's Rep.* 2.

**Pillory.**

**A** Pillory and Tunbrel ought to be in every Leet, or the Lord fined. *Cro.* 114.

This is an infamous Punishment, appointed by several Statutes to be inflicted on Offenders, *viz.*

By 51 *Hen.* 3. on Bakers.

31 *Ed.* 1. on Foretallers.

11 *H.* 7. c. 4. for False Weights.

- 33 *H. 8. c. 1.* for getting Money by counterfeit Letters and false Pretences.
- 2 *Ed. 6. c. 15.* Workmen conspiring about Wages, upon the second Conviction.
- 5 *Ed. 6. c. 6.* Counterfeiting Seals of Cloth, or taking them off.
- 5 *Eliz. c. 9.* Perjury, or Subornation of Perjury.
- 7 *Ed. 6. c. 7.* Persons convicted of Breaking the Assise of Fewel, unable to pay, &c.
- 18 *Eliz. c. 5.* Informers compounding a Penalty, without Consent of the Courts at *Westminster*, or delaying or discontinuing the Suit, ten Pounds Fine, and Pillory; the Fine to the King and Party grieved.
- 5 *Ed. 6. c. 14.* for the third Offence of Forestalling, &c.

**Piracy. See Felony.**

**P**iracy is an Offence, which being committed out of the Land, the Common Law takes no Notice of it, and therefore it cannot be tried by it; but it was tried as a Capital Crime, according to the Civil Law, in the Admiralty Court, before the Statute of 28 *H. 8. c. 15.* which alters not the Offence, but only the Method of Trial, *viz.* It says that it shall be tried according to the Course of the Common Law.

And it being an Offence by the Civil Law, which does not allow the Benefit of Clergy in any Case, and not by the Common Law, therefore there no Clergy allowed.

*Moor 756. Yelv. 135. Noy 131.*

It is for this Reason that a Pardon of all Felonies will not pardon Piracy, because it is no Felony at Common Law; and therefore there can be no Corruption of Blood upon an Attainder for this Crime, though there is a Forfeiture of Life, Lands and Goods.

Neither can there be any Accessary at Land, because the Principal is not a Felon by our Law; but by Stat. 8 *Geo. 1. c. 24.* it is enacted, That all Persons who by the Stat. 11 *Geo. 12 W. 3. c. 7.* are declared to be Accessaries to any Pirates, shall from thenceforth be Principals, and shall be tried as such by the Stat. 11 *Geo. 12 W. 3. c. 7.* and being convicted shall suffer as by the said Act, without Benefit of Clergy.

By

## Piracy.

Cases of Piracy.

By Stat. 11 & 12 W. 3. c. 7. If any of the King's Subjects commit an Act of Hostility on the Sea against other of his Subjects, by Virtue of any Commission from any Foreign Prince or State, this is Piracy.

If any Master of a Ship, Seaman or Mariner, where the Admiral hath Jurisdiction, shall betray his Trust, turn Pirate, run away with his Ship, &c. Goods or Merchandise, or yield them up to any Pirate, or shall bring any seducing Messages from any Pirate, or corrupt or attempt any Commander or Mariner to yield up, or run away with the Ship or Goods, or lay violent Hands on his Commander to hinder him from defending his Ship, &c. or shall confine the Master, or endeavour to make any Revolt in the Ship, such Person shall be taken to be a Pirate, &c.

He that sets forth a Pirate, or doth aid, assist, maintain, procure, command, counsel or advise any Person to commit Piracy, who doth it accordingly, is accessory to the Piracy; and so is the Receiver or Concealer of a Pirate, knowing him to be so; and such Accessories must be tried by the Common Law as the Principals are by the Statute 28 Hen. 8. c. 15. which is declared to be in Force, and if convicted shall be executed.

And by Stat. 8 Geo. 1. c. 24. it is enacted, That trading with a Pirate, or furnishing him on the Seas with Ammunition or Provision, or Stores of any Kind, or corresponding with him, knowing him to be a Pirate, shall be a Felon, and tried according to the Statute of 28 Hen. 8. c. 15. and 11 & 12 W. 3. c. 7. and being convicted shall suffer Death without Benefit of Clergy.

Any Person belonging to a Ship or Vessel, who shall forcibly board or enter into any Ship or Vessel, though he doth not seize or carry her off, but shall throw over Board, or destroy any Part of the Goods, shall be deemed a Pirate, and be punished as such.

Any Ship or Vessel fitted out with a Design to trade or correspond with Pirates, the said Ship and all her Goods shall be *ipso facto* forfeited; one Moiety to the King, the other to the Informer, who may sue for them in the Court of Admiralty.

But this Offence coming very little or not at all under the Cognisance of Justices of Peace, no more shall here be said of it; than that those who have a Mind to have fuller Information about it, may consult the Statutes of 28 H. 8. c. 15. 2 & 3 Ed. 6. c. 24. 11 & 12 W. 3. c. 7. 5 Ann. c. 31. 1 Geo. 1. c. 25. 4 Geo. 1. c. 11. 6 Geo. 1. c. 19. and 8 Geo. 1. c. 24.

Plague.



## Plague. See Quarentine.

**I**F any Person infected, or dwelling in an House infected with the Plague, being by a Justice or Head Officer, &c. commanded to keep Home, shall yet wilfully go Abroad, having an infectious Sore, it is Felony; if no Sore, yet shall be punished as a Vagabond, and bound to the Good Behaviour for one Year. 1 Jac. 1. c. 31. cap. 31.

Justices and Head Officers, &c. shall appoint Searchers, Watchmen, Keepers, and Buriers in Places infective, give them Direction, and administer an Oath to them for Performance of their Office. *Ibid.*

If any Person infected, &c. shall attempt to go Abroad, such Watchmen may inforce them to keep their Houses. *Ibid.*

Two Justices or Head Officers may tax every Inhabitant, &c. for the Relief of infected Persons in the same Place; and by Warrant of two Justices, &c. may levy the same by Distress; and for Default thereof, &c. by like Warrant may commit such Persons to the Gaol, 'till he satisfy the Taxation. *Ibid.*

If the Inhabitants of such Place, &c. are not able to relieve their infected Persons, &c. upon Certificate thereof, by the Head Officer and Justices, &c. any two Justices near the Place may tax the Inhabitants within five Miles thereof, for the Relief aforesaid. *Ibid.*

If any Infected shall be in any Borough, &c. where there are no Justices, or in any Hamlet, then any two Justices of the County may tax the Inhabitants of that County, and within five Miles of the Place, to be levied as aforesaid, &c. and such Sums shall be distributed by Justices, or Head Officers and Justices. *Ibid.*

All such Taxes shall be certified at the next Quarter-Sessions in such City or County, &c. Universities, Cathedral Churches, and the Colleges of *Eaton* and *Winton* are excepted out of this Act. Continued by 3 Car. 1. c. 4. and 16 & 17 Car. 1. c. 4.

A Justice may at his Discretion appoint Searchers, Watchmen, Examiners, Keepers and Buriers for Persons and Places infected with the Plague, give them their Oaths for Performance of their Offices, and other Directions, as to his Discretion shall seem good. 1 Jac. 1. c. 31. *Dalt.* c. 6 & 72. *Lamb.* 197.

1 Jac. 1. c. 31. Persons infected going Abroad, are Guilty of Felony.

Justices may appoint Searchers, &c.

Two Justices, &c. may tax Inhabitants, &c.

If not able may tax Inhabitants five Miles round.

All such Taxes to be certified to Quarter-Sessions.

## A Warrant to shut up a House which is infected, and to take Care for their present Maintenance.

1 Jac. 1. c. 31.  
continued by  
3 Car. 1. c. 4.  
and 17 Car. 1.  
c. 4. Dalt. 145.  
c. 72. Lamb.  
337. 39 Eliz.  
c. 4. Co. Inst.  
3d Part, p. 90.

**W** Hereas we are credibly informed that the Plague is in the House of A. B. whereof one died; and that divers of the Inhabitants of your said Parish have resorted to the said House, both before and after the said Party was dead; (and especially C. D. E. F. and G. H. in the House of N. M. by Reason whereof it is feared that they are sick); by which Means the Sicknes is like to increase and spread further in the Town, unless there be speedy Provision made for the Prevention thereof: These are therefore in his Majesty's Name to charge and command you that forthwith you cause the said House so infected to be shut up, and that you appoint a Warden at the Door to keep them from coming forth, and others from going to them; and that you the Church-wardens and Overseers of the Poor be careful that the Parties shut up be sufficiently provided for, for their present Relief and Sustenance: And further that you cause the said N. M. and his Family, to keep themselves within their own Doors; and that in the mean Time he forbear to victual or let any come into his House 'till he hath further Order. And of your further Care and Diligence herein we do expect a continual Account, that we may give further Directions as Occasion shall require. And we further advise and order the Parishioners that they be very careful not to mingle themselves with those that have been of the same infected House: And of this our Warrant we require you to give speedy Notice. Hereof fail not at your Peril. Given under our Hands and Seals, &c.

## A Warrant to make a Rate for the Relief of Persons infected.

2 Jac. c. 31.  
Two Justices.

**Essex, ss. F** Orasmuch as Information hath been given unto us by Certificate, that the Parish of A. within this County, is infected with the Plague; and that the Inhabitants thereof do find themselves unable to relieve the poor infected Persons, and therefore have need of Relief from the adjacent Places five Miles about, according to the Statute in that Case made and provided: These are therefore in his Majesty's Name to command you and every of you to come before us on the Tenth Day of July next, at Two

# Plague.

of the Clock in the Afternoon, at T. in N. &c. and bring with you your Church-Books of Rates for the Poor, to the End that an equal weekly Rate and Assessment may be made for the Purposes aforesaid. Hereof fail not at your Perils. Given under, &c.

A weekly Rate made the Ninth Day of *August* by J. S. and P. M. Esqs; two of his Majesty's Justices, &c. with the Assistance of the Church-wardens and Overseers of the Poor of the Parishes within five Miles Compass of the Parish of A. at this Time infected with the Plague, to be paid by the Inhabitants of the same Parishes weekly, for their Relief, during the Time of the Infection, according to the Statute in that Behalf provided.

The Inhabitants of the Parish of B. to pay weekly as followeth :

|       |       |       | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|-------|-------|-------|-----------|-----------|-----------|
| A. B. | _____ | _____ | 00        | 01        | 00        |
| C. D. | _____ | _____ | 00        | 00        | 06        |
| E. F. | _____ | _____ | 00        | 00        | 04        |
| &c.   |       |       |           |           |           |

## A Warrant to levy the weekly Relief.

Essex, ss. **F**Orasmuch as there being a Rate or Assessment made for your Parish of L. (annexed to this Warrant) for the Relief of the Inhabitants of the Parish of A. in this County, at present infected with the Plague, according to the Statute in that Behalf made and provided: These are therefore in his Majesty's Name, to command you, that you, some or one of you, do forthwith levy and collect the several and respective Sums of Money of the Persons therein respectively named, by Distress and Sale of the Goods of the Offenders, rendring to the Parties the Overplus, if any be; and the same Money so by you received, to be paid to the Overseers of the Poor of the said Parish of A. and give in the same upon your Account, at the End of your Year. Given under our Hands and Seals, &c.

1 Jac. I. c. 34.  
Two Justices.

Upon Non-payment to be committed 'till paid, and Arrears thereof.

Poison.



## Poison.

See Homicide, Title Murder.

Poisoning,  
from Treason,  
made Murder.

**K**illing a Person by Poison is so villainous a Murder, that it was Treason, and punishable by boiling to death in hot Water, by 22 H. 8. c. —. But that Stat. was repealed by 1 Edw. 6. c. 12. and 1 M. c. 1. and maliciously poisoning, by which Death doth ensue within a Year and a Day, is declared to be wilful Murder, of Malice prepensed.

A Nobleman is to have Clergy in all Cases of Felony, except in Murder and Poisoning. Vide Clergy.

Cases of it.

Killing, the Child in the Womb with Poison, if Quick, it is Murder, otherwise not. 3 Inst. 50.

Indictment, for that he did put *quoddam Venenum, Anglice* Antimony, into a Cup of Beer, and gave it to J. S. It was objected that *Venenum* was Latin for Poison generally, and not for any Species of it; but this was over-ruled. See Hardr. 361.

Case of Poisoning.

One brings poison'd Drink, and (knowing) persuades another to drink it, who drank it in the Absence of the Bringer, and this was held to be Murder. 4 Co. 44.

But whoever has a Mind, may find more Cases of this under the Head Murder in Title Homicide.



*The End of the First Volume.*

